



**SÃO TOMÉ AND PRINCIPE**

# code Criminal Procedure

Approved by Law 19/2009 of December 17th

**title**

Code of Criminal Procedure

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## **national assembly**

### **lei n.º 19/2009**

The National Assembly decrees, in accordance with paragraph b) of article 97 of the Constitution, the following:  
the:

#### **Article 1 [Approval of the Criminal Procedure Code]**

The Code of Criminal Procedure is approved, which forms an integral part of this Law.

#### **Article 2 [References]**

References to the previous Code contained in separate Laws are considered to have been made to the corresponding provisions of the Code of Criminal Procedure, approved by this diploma.

#### **Article 3 [Revocations]**

1. The Criminal Procedure Code approved by Decree No. 16489, of February 15, 1929, as amended by Decree No. 19271, of January 24, 1931 and other subsequent legislation is hereby revoked. , and the following legal diplomas:

a) Decree-Law No. 35007, of October 13, 1945 and Ordinance No. 17076, of March 20, 1959;

b) Decree-Law No. 85/72, of May 31st and Ordinance No. 340/74, of May 25th;

c) Decree-Law no. 5/80, of 22 February;

d) Decree-Law no. 7/80, of 22 February;

e) Decree-Law no. 3/84, of 31 January;

f) Law no. 5/2002, of 30 December;

g) Law no. 5/2003, of June 2nd.

2. Legal provisions that contain criminal procedural rules in opposition to those provided for in this Code are also revoked.

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#### **Article 4 [Entry into force]**

This diploma and the Code of Criminal Procedure approved by it come into force 6 months after their publication.

National Assembly, in São Tomé, on December 17, 2009.

The President of the National Assembly, *Francisco Da Silva*.

Promulgated on March 3, 2010.

Publish yourself.

The President of the Republic, *Fradique Bandeira Melo de Menezes*.



## criminal procedure code preamble

The evolution of the socio-economic and political life of São Tomé and Príncipe, an independent country since 1975, has provoked over these almost thirty years a new dynamic in development, which is not compatible with the laws inherited from colonial times, which, as an imperative of our Constitution, continued to be in force after independence.

Among these fundamental norms that are out of step with current times and structure the justice system and the democratic rule of law, are the Penal Code and the Code of Criminal Procedure.

Due to various circumstances, it was not possible, over thirty years of independence, to carry out its review, keeping in force the Portuguese Criminal Procedure Code of 1929, published by Decree No. 16489, of 15 February, with the amendments of Decree-Law no. 35007 and, among others, those contained in Decree-Law no. 184/72 of 31 May, Decree-Law no. 12/80, the latter which determined the trial of the accused to simplified procedural rules for less serious cases, Decree-Law 2/2002 on the conditions for applying the measures. This code has already been replaced in Portugal by a new code approved by Decree-Law no. 78/87, of 17th February, subsequently amended by Decree-law no. Decree-law no. 212/89, of 30 June, and 317/95, of 28 November.

Maintaining the 1929 Code of Criminal Procedure in force creates several problems in the application of criminal law that the diploma now approved aims to overcome.

The new Process Code changes the entire structure of the old Code, maintaining, however, the concepts and designations, except for the parts where it was omitted or which appeared to be more out of date.

At the systematic level of the new Code, it also makes a break, as it starts with the jurisdiction and courts and only then does the Public Prosecutor's Office, assistant and defendant appear, followed by all other regulations.

In general terms, the new Code of Criminal Procedure is characterized by the following:

- ü Precise regulation of jurisdiction, including that relating to the special forum;
- ü Maintenance of the current forms of procedure, increasing the competence of the single judge in correctional proceedings for crimes punishable by sentences of up to five years in prison;
- ü Establishment of impediments at trial level for the judge who participates in the preliminary stages of the process, namely for the one who orders and maintains preventive detention in preparatory instruction and presides over the contradictory instruction;
- ü Consecration and dignification of the status of the accused, with detailed regulation of his rights and duties, as well as the role of the defender and the moments in which his appointment is mandatory;
- ü Detailed regulation of the first judicial interrogation of the detained defendant and the possibility for the defendant to have access to the records and evidence, even if under secrecy, which determined the application of preventive detention;
- ü Precise regulation of detention and its conditions, preventing police interrogations of detained defendants before they are presented to the judge for the first judicial interrogation;
- ü Maintenance of judicial secrecy only during the preparatory instruction, unless the defendant requests contradictory instruction and declares that he intends to maintain the secrecy;
- ü Consecration that in the preparatory instruction, within the competence of the Public Prosecutor's Office, the judge performs all acts that relate to the rights, freedoms and guarantees, as well as decrees, at the request of the Public Prosecutor's Office, all coercive measures, except the term of identity and residence that can be decreed by that person;

- ü Extension of the terms of preventive detention to 3 months in the preparatory investigation, 5 months in the contradictory, 7 months until the start of the trial and 9 months until the final judgment, as well as the review of the prerequisites for preventive detention for 90 days;
- ü Possibility of extending the deadlines set by 1/3 in complex processes, due to reasoned order from the judge, which can be appealed;
- ü Consecration of the optional and contradictory nature of the contradictory instruction, which can only be requested by the defendant in relation to facts for which he has been accused by the Public Prosecutor's Office or by the assistant if the Public Prosecutor's Office has archived the investigation files;
- ü Consecration of the right of the Public Prosecutor, assistant and defendant to be present at all acts carried out in the contradictory investigation, as well as in the debate that must necessarily take place, before the final order;
- ü Precise regulation of nullities, means of proof and obtaining evidence, as well as the powers of the Public Prosecutor's Office, police entities and the judge in the preliminary phase of the process, with precise and exhaustive identification of the exclusive powers or those to be practiced by the judge;
- ü Consecration of consensus mechanisms even in the preliminary phase (archiving with dismissal of sentence and provisional suspension of the process), in which the agreement of all intervening parties is required, including the judge, and the assistant, accused or offended party may also take the initiative with regard to the provisional suspension of the process;
- ü During the hearing, the powers of the hearing chairman are clarified, as well as the evidence that can be used to form the court's conviction in its analysis of the facts;
- ü In sentencing and in line with what is mentioned for the formation of conviction, the judge is required to explain the basis of fact, specifying the proven and unproven facts and what evidence is based on to reach such conclusion;
- ü In the quarrel process, the questions are suppressed, everything happening as the process is today correctional with the aforementioned requirement with regard to the sentence;
- ü Simplification of appeals and their regime, with the obligation to always submit an allegation in the first instance, except in situations where the Supreme Court of Justice functions as a trial court in the first instance;
- ü Maintenance of special processes (absentee cases, defamation, slander and insults and special forum) with special emphasis on maintaining trials in absentia, but ensuring, in broad terms, the repetition of the trial, after the defendant's appearance;
- ü Precise regulation of the execution of sentences, with the establishment of criteria for counting prison sentences, as well as parole mechanisms.

The law provides for a special forum formed by two Judges of the First Instance drawn from among all the Judges and presided over by a Judge of the Supreme Court who presides over it, in the trial in the First Instance of the President of the Republic, the members of the government, the deputies and the magistrates. The decisions of this collective can be appealed to the full Supreme Court of Justice. The Defendant's Statute is reinforced in this legislation, highlighting the following:

- 1) Be heard by the Court or Judge whenever they must make any decision that personally affects you.
- 2) Not answering questions asked, by any entity, about the facts attributed to you and about the content of the statements you make about them.
- 3) Be assisted by a defender immediately after arrest and in all procedural acts in which he participates and, when detained, communicate, even in private, with him; (art. 41).

Likewise, the defender's assistance is mandatory in the first judicial interrogation of the detained defendant, under penalty of nullity, the interrogation of the defendant cannot take place between 10 pm and 7 am.

The forms of the process are maintained, being quarrel, correctional, transgression and summary. The quarrel process is for actions whose maximum penalty, abstractly applicable, is greater than five years in prison or for intentional crimes or crimes aggravated by the result when the death of a person was an element of the type. All cases relating to crimes whose maximum, abstractly applicable penalty is equal to or less than five years in prison or which by law does not correspond to another procedural form will be judged in correctional proceedings (art. 54, 55 of the law ).

If there is a contradictory instruction requested by the defendant and if he opposes the publicity of the process, it will remain a secret from Justice (art. 60).

Clerks are obliged to show any completed or pending processes that are not secret from the Court and to issue, by order, any certificates to anyone who shows a legitimate interest in obtaining them.

The media are permitted, within the limits of the law, to provide detailed narration of the content of procedural acts that are not covered by judicial secrecy or in the course of which assistance from the general public is permitted.

The reproduction of procedural documents or documents incorporated in the process, up to the 1st Instance sentence, unless they have been obtained through a certificate requested mentioning the purpose for which they are intended, or if there has been express authorization from the Judge or the Public Ministry that presides over the phase of the process at the time of Publication.

The transmission or recording of images or sound recording relating to the performance of any procedural act, namely the hearing, unless the Judge authorizes it by order, however, the transmission or recording of images or sound recording cannot be authorized relating to the person who opposes it.

Likewise, the publication, by any means, of the identity of victims of sexual crimes, against honor or against the preservation of private life, before the hearing, or even after, if the offended party is under 16 years old, is not used. (articles 63 and 64). In terms of detention and Restrictive Freedom Measures, detention is defined as any deprivation of liberty for a period not exceeding 48 hours in which the detainee cannot be placed in a prison established for the execution of a sentence (art. 149 .<sup>o</sup>).

Whenever any detention occurs and before any interrogation, the authority that carried out the detention must make the following communications:

a) To the relative, trusted person or defender of the detainee, preferably those indicated by him – the detainee.

b) To the entity that orders the detention if the detainee was not present immediately.

c) To the Public Prosecutor's Office in other cases. (art. 154)

The first time a defendant makes a statement, even if he or she must be detained preventively, he or she will be subject to an identity and residence term regardless of the application of another asset guarantee measure. The term will contain the obligations that the Judge found appropriate in terms of law. (article 164).

The Code adopted the concept of house arrest, which is one of the Judge's possible positions in terms of identity and residence, translated as an obligation not to leave the place of residence, for crimes punishable by a prison sentence of more than one year. (article 165).

The duration of Preventive Detention is:

a) Three months until the completion of preparatory instruction;

b) Five months until the conclusion of the contradictory instruction;

c) Seven months until the start of the trial hearing;

d) Nine months without a final, final decision.

These deadlines may be increased by (1/3) when the process proves to be exceptionally complex, declared by the Judge's order.

Likewise, these deadlines cannot be extended and, before they are exceeded, if compliance was not foreseeable, the accused or defendant must be released (article 172).

The Review of the conditions for the Application of Preventive Detention was extended from the 60 days established by Decree-Law No. 5/2002 to 90 days. During this period, the Judge, of his own motion, re-examines the factual assumptions on which the maintenance of preventive detention depends (article 174).

The Code provides for Compensation for illegal or unjustified deprivation of liberty (article 187).

Of relevant importance is the total prohibition of police authorities from hearing detained defendants during their first interrogation before they are brought before the Judge (article 212.<sup>o</sup> no. 3).

Telephone tapping is permitted at the request of the Judge in the case of investigating the crimes of:

- a) Terrorism, violent or highly organized crime;
- b) Criminal associations;
- c) Against peace and humanity;
- d) Against State security;
- e) Production and trafficking of drugs;
- f) Counterfeiting of currency or securities equivalent to currency;
- g) Covered by a convention on the safety of air or sea navigation. The interception and recording of conversations or communications between the accused and his defender is prohibited, unless the Judge has well-founded reasons to believe that they constitute the object or element of the crime (art. 252).

The Preparatory Instruction is waived when the news reports collected are authentic in Court, and may also be waived by the Public Prosecutor's Office when the analysis of the news report and the evidence results in safe and clear indications of the agent's guilt, regardless of the culpability of the agent, regardless of the form of the process and applicable penalties (art. 265).

The instruction period is 8 months for the quarrel process and six months for the correctional process (art. 266).

The contradictory instruction is optional and only takes place when the crime carries a prison sentence. The defendant and the assistant may request the opening of a contradictory investigation (article 282).

A sentence of civil compensation is provided for in the event of acquittal, as long as the offense of this nature or liability based on risk is proven (article 331).

There is the possibility of voluntary payment of a fine in the case of misdemeanor or transgression, preventing the administrative authorities from sending the case to the Court (art. 341).

In terms of appeals, the code provides for their types and processing without the complicated reference to the Civil Procedure Code (article 354).

The report of any crime committed by a Judge or magistrate of the Public Prosecutor's Office will be addressed to the president of the Superior Judiciary Council and will be distributed to the president of the Supreme Court of Justice in the case of a Judge or to the Attorney General of the Republic in the in the case of a public prosecutor (articles 404 and 405 CPP).

The code did not forget the execution of prison sentences in the prison establishment and the role of visiting and accompanying inmates by the Judge (art. 413).



## BOOK I

# Of the Jurisdiction, Competence and Action

# TITLE I *Jurisdiction and competence*

## Section I General provisions

### Article 1 [Legality of criminal action, interpretation and integration of procedural law penal]

1. Every crime or misdemeanor corresponds to a criminal action, which will only be carried out in accordance with this code.
2. In omitted cases, when its provisions cannot be applied by analogy, observe -the rules of civil procedure that are harmonized with the criminal process will be adopted and, in the absence of these, the general principles of criminal procedure will apply.

### Article 2 [Principle of sufficiency of criminal action]

Criminal action can be carried out and judged independently of any other. In criminal proceedings, all issues relevant to the decision of the case will be resolved, whatever their nature, except in cases excepted by law.

### Article 3 [Non-criminal prejudicial matters]

1. When, in order to determine the existence of a criminal offense, it is necessary to resolve any issue of a non-criminal nature that cannot be conveniently decided in the criminal proceedings, the judge may suspend the proceedings, so that the respective action can be brought and judged in the competent court.
2. It is assumed that it is inconvenient to judge the preliminary question in criminal proceedings:
  - a) When it affects the marital status of people;
  - b) When it is difficult to resolve and does not concern facts whose proof is limited by civil law.
3. Suspension may be requested by the Public Prosecutor's Office, the assistant or the defendant, at any time in the process, or ordered ex officio by the judge in the contradictory instruction. The suspension should not prejudice the carrying out of urgent evidentiary measures.
4. The judge will set the suspension period, which may be extended for a reasonable period of time, if the delay in the decision is not attributable to the defendant or the assistant.
5. When it does not have the competence to take action on the preliminary question, the Public Prosecutor's Office will intervene in the civil case to promote its rapid progress and inform the criminal judge. In the cases of no. 2, al. b), end the suspension, when it proves to be inconvenient or excessively long or when the action is not proposed within thirty days.
6. When suspending the criminal proceedings, for judgment in another court of the prejudicial matter, the judge must define the status of the defendant, in accordance with the law, suspending the statute of limitations for the criminal proceedings.

### Article 4 [Preliminary questions in non-criminal proceedings]

1. Whenever in any non-criminal proceeding it is shown that it is necessary to decide on the existence or non-existence of any fact that constitutes a public crime, in order to judge the question at issue, the judge may suspend that proceeding until the criminal court decides.
2. The suspended process will continue its terms if the criminal action is not carried out within a period of one month or if the criminal process is stopped at the secretariat for this period of time.

## Section II Jurisdiction

### Article 5 [Administration of criminal justice]

Judicial courts are the bodies competent to decide criminal cases and apply criminal penalties and security measures.

### **Article 6 [Exercise of criminal jurisdictional function]**

1. Judicial courts administer criminal justice in accordance with law and law.
2. In exercising their function, courts and other judicial authorities have the right to be assisted by all other authorities. The requested collaboration prefers any other service.

## **Section III of Competence**

### **Article 7 [Law regulating material and functional competence]**

1. The material and functional competence of the courts in criminal matters is regulated by the provisions of this Code and, alternatively, by the laws on judicial organization.
2. They have criminal jurisdiction:
  - a) The Supreme Court of Justice;
  - b) First instance courts judging collectively or individually;
  - c) The Jury Court.

### **Article 8 [Competence of the Supreme Court of Justice]**

The Supreme Court of Justice is responsible for:

1. To the Counselor Judge, as a single judge:
  - a) Consider on appeal the sentences and orders preferred by the single judge of first instance or the Regional Court;
  - b) Preside over the contradictory investigation and perform the acts within the judge's competence in the preparatory investigation, in the criminal proceedings referred to in article 9;
  - c) Review and confirm a foreign criminal sentence.
2. In full:
  - a) Know the preferred resources or decisions in the dispute process;
  - b) To hear about requests for *habeas corpus* due to illegal arrest;
  - c) Give seats;
  - d) Perform other duties conferred by law.

### **Article 9 [Special forum]**

1. The President of the Republic, the Prime Minister, members of the central and regional government, deputies and magistrates enjoy a special jurisdiction in criminal matters, being judged in the first instance by a panel formed by two judges of the first instance – drawn at random among all – and presided over by an advisory judge, equally drawn from among the advisory judges of the Supreme Court of Justice.
2. The contradictory instruction and the acts within the jurisdiction of the judge in the preparatory instruction are the responsibility of an advisory judge, drawn according to the terms of the previous article.
3. Acts of preparatory investigation must be presided over by the Attorney General of the Republic or by a magistrate he designates, with only strictly indispensable acts being delegated to police entities.
4. The decisions of this panel and the judge referred to in paragraph 2 may be appealed to the Full Court of the Supreme Court of Justice.

### **Article 10 [Competence of collective courts]**

It is up to the collective district courts to judge in fact, definitively, and in law with an appeal to the Supreme Court of Justice, the infractions to which corresponds to a dispute process and which by law are not excluded from their jurisdiction.

### **Article 11 [Competence of the jury]**

1. The jury is responsible for judging cases that, if the intervention of the jury has been requested by the Public Prosecutor's Office, the assistant or the accused, concern crimes whose maximum penalty, abstractly applicable, is greater than eight years in prison.
2. The request from the Public Prosecutor's Office and that of the assistant must be made within the deadline for filing the accusation, together with it, and that of the accused, within the deadline for the request to open a contradictory investigation. If there is no contradictory instruction, the application of the defendant and that of the assistant who did not bring charges must be made within eight days from the notification of the order designating the day for trial.
3. The request for jury intervention is irreversible.

### **Article 12 [Competence of the single judge of first instance]**

1. The single judge of first instance is responsible for preparing and judging criminal cases that correspond to correctional or summary proceedings, as well as:
  - a) Proceed with the judgment of misdemeanors;
  - b) Prepare cases that must be judged by collective courts or by a jury;
  - c) Comply with precatory letters, rogatory letters and requests addressed to him by courts or competent authorities;
  - d) Exercise the powers of the judge in the context of preparatory investigation;
  - e) Direct contradictory instructions;
  - f) Perform the other functions conferred by law, when the Public Prosecutor's Office in the indictment, and even in the context of crimes, understands that a prison sentence exceeding 5 years should not, specifically, be imposed.
2. In the case provided for in art. f) of the previous paragraph, the court cannot impose a prison sentence of more than 5 years.

### **Article 13 [Territorial competence]**

1. The court in whose area the consummation took place is competent to hear the crime.
2. If the crime has not been consummated, the court in whose area the last act of execution or punishable act was carried out has jurisdiction.
3. To hear a crime that is consummated by successive or repeated acts, or by a single fact likely to continue, the court in whose area the last act was carried out or the consummation has ceased has jurisdiction.
4. If the crime was committed within the limits of several districts and there are doubts about the one in which it was committed, the court in any of the areas will be competent to hear it, preferring the one that first becomes aware of the crime.

### **Article 14. [Crime partially committed in national territory]**

1. If the offense was committed only in part within national territory, the court in whose area the last act of consummation, execution, preparation or participation that is punishable by law was committed will have jurisdiction.
2. If after the last act committed in national territory, others involving the same offense were committed in foreign territory, the São Tomé courts will be aware of them all and will be competent to judge all their agents.

### **Article 15. [Ignorance of the place of the crime]**

1. If the place where the offense was committed is unknown, the court at whose direction or in whose area the defendant was arrested will be competent to hear it, or, if there is no defendant arrested, where the crime was first reported.

2. If there are several defendants arrested, the court in whose jurisdiction or in whose area the largest number of defendants are detained will have jurisdiction; If the number is equal or there are no defendants arrested, the court that first became aware of the offense will have jurisdiction.

### **Article 16. [Crimes on board a ship or aircraft or small vessels]**

1. The Court in the Santomean port area where the agent goes or where he disembarks is competent to hear crimes committed on board a ship; and, if the agent does not go to Santomean territory or does not disembark there, or is part of the crew, the Court of the registration area.

2. The provisions of the previous paragraph are correspondingly applicable to crimes committed on board an aircraft.

3. For any case not provided for in the previous paragraphs, the Court of the area where the crime was first reported is competent.

### **Article 17 [Crimes committed abroad]**

To deal with crimes committed by São Tomé or a foreigner in a foreign country not included in the previous article, to which São Tomé criminal law is applicable, the court where the offender is found is competent.

### **Article 18.<sup>o</sup> [Crimes in which the judge or magistrate of the Ministry is offended Public]**

1. For cases in which the judge or public prosecutor is offended, the court of first instance based in the capital of the country is competent.

2. If one of the magistrates of that court is offended, the court immediately following will have jurisdiction.

3. The court referred to in the previous article is also competent to prepare cases for offenses committed in the respective region by the judge, by his substitute, when in office, or by the Public Prosecutor's magistrate before him, outside the exercise of duties. their functions and which do not concern them.

### **Article 19 [Accumulation of crimes and subjective connection]**

1. When a defendant is accused of several crimes, the court competent for the trial is that of the crime for which the most serious penalty corresponds and, in the case of crimes of equal gravity, the court for which the defendant is arrested, or, not being, that of the most recent crime and, being of the same date, the one in which the order of indictment or equivalent was first issued.

2. If several proceedings have been initiated, the one relating to the crime that determines jurisdiction for trial will be added.

3. When the perpetrator of a crime commits other crimes that contribute to delaying the trial, the judge may, of his own motion, at the request of the Public Prosecutor's Office or the accusing party, order him to answer separately for one or more of the crimes, and that the sentence be carried out immediately.

4. If the defendant, in the case of the previous paragraph, has been sentenced to a penalty within the jurisdiction of the collective court, this court will hear of the other crimes, whatever the corresponding penalty, unless knowledge of the crime is the responsibility of the jury or the special forum.

### **Article 20. [Objective connection by co-participation]**

1. The perpetrators of the same crime will respond jointly in the court competent for the trial of the one who is subject to a more serious penalty, unless one of them has a special forum, because he will respond in that forum.

2. The judge may, ex officio, at the request of the Public Prosecutor's Office, the accusing party or the defendants, order, in a reasoned order, a separate trial, when necessary.

sary, so as not to prolong the preventive detention of any of the defendants or for another reasonable reason.

### **Article 21 [Objective connection due to reciprocal or simultaneous infringements]**

1. The perpetrators of several crimes committed on the same occasion reciprocally or by several people together will be jointly liable, in the court competent to judge the most serious offence.
2. If the crimes are of equal gravity, the court in which any defendant is detained will have jurisdiction; if there are several defendants arrested, the one with the largest number of defendants is arrested; and if the number is equal, or there are no defendants arrested, the court where the order of indictment or equivalent is first issued.
3. For all crimes, a single process will be organized, when committed in the same region and, if several crimes have been initiated, as soon as the connection is recognized, all will be joined to the most serious crime and, in the if they are of equal gravity, to that in which an order of indictment or equivalent is first issued.
4. If the crimes were committed in different regions, the processes will be joined, after the order of indictment or equivalent has become final, to the one in which, under the terms of this article, the trial must proceed.

### **Article 22 [Crimes that are the cause or effect of each other]**

1. Officially, or at the request of the Public Prosecutor's Office, the accused, the assistant or the injured party, the perpetrators of different crimes committed on different occasions may be tried jointly, when one is the cause or effect of the other and is prosecuted in the same court.
2. In the case provided for in this article, the proceedings will be added to the case of the most serious crime and, if they are of equal severity, to that of the most recent crime.

### **Article 23. [Misdemeanors and transgressions that appear in the same report]**

Misdemeanors and transgressions of notices, positions or regulatory provisions appearing in the same report raised against several offenders may be jointly prosecuted and judged, even if the conditions required in the preceding articles are not met.

### **Article 24. [Crimes for which only a few defendants are responsible and committed in regions miscellaneous]**

1. If there are some defendants in a case involved in other criminal offenses that are not the responsibility of everyone and committed in different districts, each of them will be judged by the court that is competent for the most serious crime for which they are responsible, in accordance with the rules of the preceding articles.
2. If the crimes were committed in the same district, all of its agents will be held liable together, although some are not involved in all of them, and will be judged by the court competent to hear the most serious crime, and for this purpose they must be joined together.  
The proceedings are carried out, after the order of indictment or equivalent, and the judge may use the authority granted to him in paragraph 2 of article 20.

### **Article 25. [Extension of jurisdiction in case of accumulation of crimes]**

When a court must deal with an accumulation of crimes and some of them do not fall within its normal jurisdiction, it will hear them all, even if it deems the accusations of those that determined its jurisdiction to be unfounded.

# TITLE II *Actions arising from crime*

## CHAPTER I Criminal action

### Single section Of the Public Prosecutor's Office, the accusing party and the assistant

#### Article 26 [Exercise of criminal action]

Criminal proceedings are public and the Public Prosecutor's Office is responsible for carrying them out with the restrictions set out in the following articles.

#### Article 27. [Who can carry out criminal action, in addition to the Public Prosecutor's Office]

1. In addition to the Public Prosecutor's Office, the following may carry out criminal proceedings:

- a) Administrative authorities, regarding transgressions of postures, regulations and notices;
- b) Criminal police bodies, regarding crimes that must be tried in summary proceedings and all misdemeanors;
- c) State bodies with competence to supervise certain activities or the execution of special regulations, regarding contraventions found in the exercise of these activities or against these regulations.

2. The remittance to the court by the entities referred to in this article of the news reports collected under the terms of article 143 of the Code of Criminal Procedure or of criminal bodies duly organized regarding crimes for which they can carry out criminal action is equivalent, for all the effects, to the accusation in criminal proceedings.

#### Article 28.<sup>o</sup> [Legitimacy to carry out criminal action in crimes whose procedure criminal depends on complaint]

1. When the criminal procedure depends on a complaint, the offended person is entitled to present it, unless otherwise provided, considering himself as such, the holder of the interest that the law specifically wanted to protect with the incrimination, which o may be carried out by a judicial agent or by an agent with special powers.
2. If the offended party dies without having filed a complaint or renounced it, the right to file a complaint will belong to the surviving or equivalent spouse, and to their descendants and, in the absence of these, to their ascendants, siblings and their descendants, unless any of them participated in the crime.
3. If the offended party is incapacitated due to a mental anomaly, or is under 18 years of age, the right to complain will belong to their legal representative and the people referred to in the previous paragraph.
4. Any of the people referred to in numbers 2 and 3 may file a complaint, regardless of the agreement of the others.

#### Article 29 [Legitimacy in proceedings dependent on private accusation]

1. When the criminal procedure depends on a private accusation, the offended party or other people, it is necessary for these people to complain, become assistants and deduce a private accusation.
2. The Public Prosecutor's Office carries out of its own motion any steps it deems essential to discovering the truth and falls within its competence, participates in all procedural acts in which the private accusation is involved, accuses jointly with it and appeals autonomously against the judicial decisions.
3. The provisions of paragraph 1 of the previous article are correspondingly applicable.

### **Article 30 [Approval of withdrawal of the complaint or private accusation]**

1. In the cases provided for in articles 28 and 29, the intervention of the Public Prosecutor's Office in the process ends with the approval of the withdrawal of the complaint or private accusation.
2. If the withdrawal is known during the preparatory instruction, approval is the responsibility of the Public Prosecutor's Office. If it takes place during the contradictory instruction or trial, it is up to the judge or the president of the court, respectively.
3. As soon as it becomes aware of the withdrawal, the Public Prosecutor's Office or the judge responsible for the approval notifies the defendant so that, within five days, he can declare, without the need to give reasons, whether he opposes it. Failure to declare is equivalent to non-opposition.
4. If the accused does not have a defender appointed and his whereabouts are unknown, the notification referred to in the previous paragraph is made by public notice.

### **Article 31 [Assistants in criminal proceedings]**

1. The persons referred to in articles 28 and 29 and also any person in cases of embezzlement, bribery, corruption and harmful administration in an economic unit in the public or cooperative sector are entitled to become assistants in criminal proceedings.
2. Assistants have the position of assistants to the Public Prosecutor's Office, to whose activity they are subject to their intervention in the process, subject to exceptions provided by law.
3. Assistants are particularly responsible for:
  - a) Formulate the accusation independently of that of the Public Prosecutor's Office.
  - b) Intervene directly in the contradictory investigation, offering evidence and asking the judge to take appropriate steps;
  - c) Appeal the order of non-indictment, the sentence or the order that puts an end to the process, even if the Public Prosecutor's Office has not done so.
4. The assistants formulate their accusation within 15 days from the date of notification from the Public Prosecutor's Office, the accusation made or the abstention order.
5. When assistants formulate accusations for facts other than those that constitute the subject of the Public Prosecutor's accusation, they will not be able to appeal the decision of the judge who receives the Public Prosecutor's accusation.
6. Assistants can intervene at any time in the process, accepting it in its current state, as long as they request it up to five days before the trial hearing.

### **Article 32 [Legal representation of the assistant]**

1. Assistants are always represented by a lawyer. If there are several assistants, they are all represented by a single lawyer. If they disagree on the choice, the Judge decides.
2. The provisions of the second part of the previous paragraph are subject to the exception of incompatible interests between the various assistants, as well as the fact that the crimes attributed to the defendant are different. In the latter case, this group of people who the Law allows to be appointed as assistants for each of the crimes can appoint a lawyer, although it is not lawful for each person to have more than one representative.

### **Article 33 [Exercise of criminal prosecution by the Public Prosecutor's Office]**

The Public Prosecutor's Office carries out criminal proceedings ex officio or through a report or complaint.

### **Article 34 [Mandatory reporting to the Public Prosecutor's Office]**

1. Reporting to the Public Prosecutor's Office is mandatory:
  - a) For the police authorities, regarding all crimes of which they are aware;
  - b) For public servants, regarding crimes of which they become aware in the exercise or because of their duties.
2. In the case of crimes of a semi-public nature, participation will only be mandatory if the holder of the right to complain exercises it within 8 days immediately after the report is drawn up.

### **Article 35 [Optional complaints]**

1. Anyone may report crimes of which they are aware to the Public Prosecutor's Office or criminal police bodies, as long as the right to report is not limited by law to certain people.

2. Any complaint made to any entity other than the competent Public Prosecutor's Office will be immediately transmitted to the latter.

### **Article 36 [Content of the complaint]**

1. The complaint can be made verbally or in writing and will contain, when possible:

a) A succinct statement of the facts and their circumstances that may be of interest to the criminal proceedings;

b) Indication of the perpetrator of the crime or its characteristic signs, or any elements that may contribute to its identification;

c) The identity of the offended party, if known;

d) The names and residences of witnesses.

2. If the complaint is made verbally, it will be reduced to a document signed by the employee who receives it and by the complainant or, when he does not know or cannot write or cannot prove his identity, by two supporting witnesses.

3. If the complaint is made in writing, privately, it will be your signature, or signature upon request, affixed to it, with the identification of the complainant.

4. The complainant may declare in the complaint that he wishes to become an assistant, if the law grants him this option.

## **CHAPTER II The accused and his defender**

### **Article 37 [Quality of defendant]**

1. Anyone against whom an accusation is made or an investigation is requested in a criminal proceeding assumes the status of defendant.

2. The status of defendant remains throughout the course of the process.

### **Article 38 [Constitution of defendant]**

1. Without prejudice to the provisions of the previous article, the constitution of a defendant is mandatory as soon as:

a) When an instruction is issued against a specific person, he or she makes statements before the judge, the Public Prosecutor's Office or criminal police bodies;

b) A measure of coercion or property guarantee must be applied to any person;

c) A suspect is detained, in accordance with this code; or

d) A report is raised that identifies a person as an agent of a crime and it is communicated to them, unless the news is manifestly unfounded.

2. The constitution of an accused occurs through communication, oral or in writing, made to the target by the judge, Public Prosecutor's Office or criminal police body, that from that moment onwards the person must consider himself an accused in a criminal proceeding and of the appointment and, if necessary, explanation of the procedural rights and duties referred to in article 41, which for this reason become your responsibility.

3. The constitution of an accused implies the delivery, whenever possible in the act itself, of a document identifying the case and the defender, if this has been appointed, and the procedural rights and duties referred to in article 41.

4. The omission or violation of the formalities provided for in the previous paragraphs implies that the statements made by the person concerned cannot be used as evidence.

5. Failure to validate the constitution of an accused by the Judge or the Public Prosecutor's Office does not prejudice the evidence previously obtained.

### **Article 39 [Other cases where a defendant is constituted]**

1. If, during any inquiry carried out on a person who is not an accused, a well-founded suspicion of a crime committed by that person arises, the entity carrying out the act suspends it immediately and proceeds with the communication and indication referred to in paragraph 2 of the previous article .
2. The person suspected of having committed a crime has the right to be constituted, at his request, as a defendant whenever steps are being taken to prove the accusation that affects him personally.
3. The provisions of paragraphs 3 and 4 of the previous article are correspondingly applicable.

### **Article 40 [Procedural position]**

From the moment a person acquires the status of defendant, he or she is guaranteed the exercise of procedural rights and duties, without prejudice to the application of coercive measures and property guarantees and the carrying out of evidentiary measures, under the terms specified in the law.

### **Article 41 [Procedural rights and duties]**

1. The defendant enjoys, in particular, at any stage of the process and, subject to exceptions in law, the rights to:
  - a) Be present at procedural acts that directly concern him/her;
  - b) Be heard by the court or judge whenever they must make any decision that personally affects you;
  - c) Be informed of the facts alleged against him before making statements to any entity;
  - d) Not answering questions asked, by any entity, about the facts attributed to him and about the content of the statements he makes about them;
  - e) Appoint a lawyer or ask the court to appoint a lawyer;
  - f) Be assisted by a defender immediately after arrest and in all procedural acts in which he participates and, when detained, communicate, even in private, with him;
  - g) Intervene in the investigation, offering evidence and requesting any steps deemed necessary;
  - h) Be informed, by the judge, Public Prosecutor's Office or criminal police bodies before which you are obliged to appear, of your rights;
  - i) Appeal, in accordance with the law, decisions that are unfavorable to you.
2. The private communication referred to in paragraph e) of the previous paragraph occurs in plain sight when security reasons so require, but under conditions of not being overheard by the person in charge of surveillance.
3. In particular, the defendant is responsible for:
  - a) Appear before the judge, the Public Prosecutor's Office or criminal police bodies whenever the law requires it and you have been duly summoned to do so;
  - b) Answer truthfully the questions asked by a competent entity about your identity and, when the law requires it, about your criminal record;
  - c) Provide proof of identity and residence as soon as he assumes the status of defendant, d) Be subject to evidentiary measures and measures of coercion and asset guarantee specified by law and ordered and carried out by a competent entity.

### **Article 42 [Defender]**

1. The defendant may appoint a lawyer at any time during the process.
2. In cases where the law determines that the accused must be assisted by a defense attorney and the defendant has not appointed him or does not appoint him, the judge appoints him a lawyer or trainee lawyer, but the

Appointed defender ceases duties as soon as the defendant appoints an agent. Exceptionally, in cases of urgency and it is not possible to appoint a lawyer or trainee lawyer, a suitable person may be appointed, preferably with a degree in Law, who will cease duties as soon as it is possible to appoint a lawyer or trainee lawyer.

3. If the accused has more than one defender appointed, notifications are made to the person indicated first in the act of constitution.

#### **Article 43 [Rights of the defender]**

1. The defender exercises the rights that the law recognizes for the accused, except for what the law reserves personally. mind to this one.

2. The accused may withdraw the effectiveness of the act carried out on his behalf by the defender, provided that he does so by means of an express declaration prior to the decision relating to that act.

#### **Article 44 [Mandatory assistance]**

1. The defender's assistance is mandatory:

a) In the first judicial interrogation of a detained or imprisoned defendant;

b) In the investigative debate and at the hearing, except in the case of a process that cannot give rise to the application of a prison sentence or internment security measure;

c) In any procedural act, whenever the defendant is deaf, mute, illiterate, unfamiliar with the Portuguese language, under 21 years of age, or if the question of his non-imputability or diminished imputability is raised;

d) In ordinary or extraordinary resources;

e) In cases of statements for future memory in preparatory or contradictory instructions;

f) At the trial hearing held in the absence of the accused;

g) In other cases that the law determines.

2. In cases of transgression, the judge is only obliged to appoint an unofficial defender if the defendant requests it or if a prison sentence or security measure is imposed.

3. Outside of the cases provided for in the previous paragraph, the court may appoint a defender to the accused, ex officio or at his request, whenever the circumstances of the case reveal the need or convenience for the accused to be assisted.

4. Without prejudice to the provisions of the previous paragraphs, if the accused does not have an appointed lawyer or appointed defender, the appointment of a defender in the indictment order or equivalent is mandatory.

#### **Article 45 [Assistance to several defendants and replacement of the defender]**

1. If there are several defendants in the same case, they may be assisted by a single defense attorney, if this does not contradict the function of the defense.

2. The court can always replace the appointed defender, at the request of the accused, or the defender himself, if they allege a cause that the court considers just.

3. If the defender, in relation to an act in which assistance is necessary, does not appear, is absent before completion or refuses or abandons the defense, the court immediately appoints another defender; but it may also be possible, when immediate appointment proves impossible or inconvenient, to interrupt the act.

4. As long as he is not replaced, the defender appointed for an act remains for subsequent acts of the process.

5. The exercise of the function of appointed defender is always remunerated, under the terms and in the amount to be established by the court, within limits set out in tables approved by the Ministry of Justice or, failing that, taking into account the fees currently paid by services of the type and importance of those provided. The defendant, the assistant, the civil parties or the coffers of the Ministry of Justice are responsible for the retribution, depending on the case.

## CHAPTER III Civil action

### Article 46 [Compensation for losses and damages]

The claim for compensation for losses and damages based on the commission of a crime is filed in the respective criminal proceedings and can only be filed separately, in civil courts, in the cases provided for in this code.

### Article 47 [Separate civil application]

1. The request for civil compensation may be filed separately before the civil court, when the criminal action has not been carried out by the Public Prosecutor's Office within six months, counting from the participation in court, or has not been progressed during that period of time, or the criminal proceedings have been archived, or the accused has been acquitted in the criminal proceedings.
2. If the criminal action depends on a complaint from the offended party, the civil action may be freely initiated but, if so, the criminal action will be extinguished.
3. If criminal proceedings have been initiated for a crime that depends on a complaint from the offended party, civil proceedings may only be initiated separately when the criminal proceedings have not been ongoing for six months or more, through no fault of the accusing party, when the proceedings have been dismissed or the defendant has been acquitted.

### Article 48 [Effects of the settlement in civil action]

The settlement in civil action prevents the exercise of criminal action that depends on a complaint.

### Article 49 [Legitimacy and deadlines for claiming compensation]

1. The claim for compensation may be made in the criminal proceedings by the injured party, understood as the person who suffered damage resulting from the crime, even if he or she did not become an assistant, within 10 days after the accusation by the Public Prosecutor's Office, and must therefore be notified by the same.
2. The Public Prosecutor's Office must request compensation for losses and damages in favor of the State, if it is entitled to it, and in favor of legal entities of public interest and incapacitated individuals to whom it is owed, when they are not represented by a lawyer in the process, and within the same period in which the public accusation must be filed.
3. The request for compensation for losses and damages will be made without the obligation to make pleadings.
4. Evidence relating to compensation will be offered in the applications themselves, and in addition to those in the case, more than five witnesses may not be called by the respective procedural subjects.
5. Once the request referred to in number 1 has been made, the defendant will be notified to respond within 10 days, if desired. The lack of a defense does not imply conviction in the request, nor a confession of the facts.

### Article 50 [Effect of terminating criminal proceedings before trial]

Closing the criminal action before the trial will prevent the court from continuing to hear the action for damages, which may however be filed in the civil court.

### Article 51 [Reparation for losses and damages]

1. In case of conviction, the judge will award an amount to the offended parties as compensation for losses and damages, even if it has not been requested.
2. When the law grants civil compensation to other people, their respective compensation will be arbitrated.
3. The amount of compensation will be determined according to the prudent discretion of the judge, who will take into account the seriousness of the infraction, the material and moral damage caused by it, the economic situation and the social condition of the offended party and the offender.

4. The people to whom compensation is due may request, before the final sentence is handed down in the first instance, that it be liquidated in execution of the sentence and, in this case, the liquidation and execution will be carried out before the civil court, serving from enforceable title to criminal sentence.

5. If an action for damages is pending or has been judged in the civil court, in cases where the law allows it, the compensation will not be determined in the criminal action.

6. The amount awarded as compensation must be updated, in accordance with the terms and rules of civil law.

#### **Article 52 [Compensation based on civil liability or risk]**

In cases of acquittal on the criminal charge, the judge will sentence the defendant to civil compensation, provided that civil or risk liability is proven, taking into account the criteria referred to in the previous article.

#### **Article 53 [Payment of compensation]**

1. Whenever the holder of the right to compensation has not appointed a lawyer, the representative of the Public Prosecutor's Office must verify, within the ten days immediately following its establishment, through an examination of the file, whether the payment of the indicated compensation appears to be or not carried out. When payment has not been made, it will ensure that it is done voluntarily, ordering the debtor to be notified so that the debtor can, within thirty days, prove it or deposit the amount of compensation to the court.

2. After this period has elapsed, if no payment or deposit of compensation has been made, the Public Prosecutor's Office will promote the respective execution.

3. The compensation obtained through execution will be delivered to the right holder at no cost to him.





**BOOK II**

**Of the Process**

# TITLE I *General provisions*

## CHAPTER I Forms of the process

### Article 54 [Forms of criminal proceedings]

1. Criminal proceedings are common or special.
2. The common process forms are:
  - a) The dispute process;
  - b) The correctional process;
  - c) The transgression process;
  - d) The summary process.
2. These forms of process must be used in accordance with the following articles, when there is no special process prescribed in this code or in the law.

### Article 55 [Dispute process]

Cases relating to crimes will be judged in court proceedings:

- a) The maximum penalty, abstractly applicable, is greater than five years in prison;
- b) Intentional or aggravated by the result, when the death of a person is an element.

### Article 56 [Correctional and transgression process]

1. All cases relating to crimes will be judged in correctional proceedings:

- a) The maximum penalty, abstractly applicable, is equal to or less than five years in prison;
- b) That by law do not correspond to another procedural form.

2. Contraventions will be judged in the transgression process, regardless of the legal provision in which they are provided for, as well as transgressions to regulations, notices, regulations or any provisions that, taking into account the entity that formulates them, must qualify as regulatory.

### Article 57 [Summary process]

Crimes to which penalties corresponding to correctional or transgression proceedings are applicable will be judged in summary proceedings, whenever the offender is arrested in flagrante delicto and the trial can take place within the period prescribed in this code.

### Article 58 [Form of process. It's a shame]

If the use of a procedural form depends on the penalty applicable to the crime, the abstractly applicable penalty will be taken into account, regardless of any aggravating or mitigating circumstances that may contribute to it.

## CHAPTER II Judicial acts

### Article 59 [Maintenance of the order of judicial acts]

1. It is the responsibility of magistrates, criminal police authorities and court officials to regulate work and maintain order in the procedural acts over which they preside or direct, taking the necessary measures against anyone who disrupts the course of the respective acts.
2. If the offender must still intervene or be present on the same day, in an act presided over by the judge, the judge will order, if necessary, that he be detained until the time of his intervention, or for as long as his presence is essential.

3. If, during a procedural act, the commission of any infraction is verified, the competent entity, in accordance with paragraph 1, raises or orders the raising of a report and, if applicable, arrests or orders the arrest of the agent, for the purposes of the procedure, which must take place in the competent court and before a judge other than the one who ordered the detention.
4. To maintain order in procedural acts, magistrates request, whenever necessary, assistance from the public force, which is subject, for this purpose, to the power of direction of the authority presiding over the act.

### **Article 60 [Publicity of the process and judicial secrecy]**

1. Any person may attend procedural acts declared public by law, namely hearings. Unofficially or at the request of the Public Prosecutor's Office, the accused or the assistant, the judge may, however, decide, by reasoned order, to restrict the public's free assistance or that the act, or part of it, takes place without publicity, whenever advertising may harm the rights of those subjects or procedural participants.
2. The criminal proceedings are secret until the order of indictment or equivalent is notified or until there is an order of definitive archiving. The process is public from the request for the opening of the contradictory instruction, if this is only requested by the defendant and he, in the request, does not declare that he opposes publicity.
3. The magistrates who conduct the investigation and the officials and police forces who participate in it are obliged to keep judicial secrecy.
4. During the preparatory investigation, the file may be consulted at the court secretariat, by the assistant, the accused, and their respective lawyers, when there is no inconvenience in discovering the truth.
5. As soon as the preparatory instruction is directed against a specific person, the defense has the right to take note of the statements made by the accused and the statements and requests made by assistants; Both the prosecution and the defense have the right to be aware of the records of evidentiary investigations that they can attend and of incidents or exceptions in which they must intervene as parties. For these purposes, the aforementioned declarations, requests and records will be displayed, separately, at the secretariat, for a period of three days, without prejudice to the progress of the process. Everyone is obliged to keep legal secrecy.
6. The preparatory investigation files are provided to the assistant, for the purpose of formulating the accusation, and to the defense, after notification of the accusation.
7. During the contradictory investigation, the Public Prosecutor's Office, the assistant and the accused may freely consult the process, at the court secretariat, without prejudice to the procedural acts in question course.
8. The instructor may inform the experts, interpreters or witnesses, of the acts of the process or document that should be shown to them for a better investigation of the truth and that they will not be able to reveal.
9. Violation of judicial secrecy is punishable by the penalty set out in article 450 of the Penal Code, without prejudice to the disciplinary procedure applicable to the case.

### **Article 61 [Obligation to show a process that is not under judicial secrecy]**

1. Clerks are obliged to display any completed or pending processes, which are not under judicial secrecy, and to issue, by order, any certificates to anyone who shows a legitimate interest in obtaining them.
2. The magistrate presiding over the respective procedural phase may prohibit, under penalty of disobedience, the publication of certificates, whenever publicity may offend morality, interest or public order.

### **Article 62 [Certificates of proceedings under judicial secrecy]**

1. The magistrate who presides over the respective procedural phase may allow process certificates to be issued in secret to be added to other processes equally in

judicial secrecy, when requested by the court in which the latter proceedings are pending.  
cesses.

2. Certificates of processes that have waited for more than three months for the production of better evidence may also be issued, by order, when the applicants show a legitimate interest in joining them to any process, and cannot, under penalty of disobedience, be issued. dience, be used for another purpose.

### **Article 63 [Unauthorized publication of acts or procedural documents]**

It is prohibited, under penalty of disobedience, the publication not authorized by the magistrate in charge of the case, or not resulting from the law, of any acts or documents of a case, in full or in extract, before the trial hearing or before the handing down of an order. - archiving the process, and any acts or documents, before, during or after the discussion and trial hearing, when this is secret.

### **Article 64 [Media]**

1. Media bodies are permitted, within the limits of the law, to provide a detailed account of the content of procedural acts that are not covered by legal secrecy or during which the general public is permitted to assist.

2. However, under penalty of qualified disobedience, the following are not authorized:

b) The reproduction of procedural documents or documents incorporated in the process, up to the first instance sentence, unless they have been obtained through a requested certificate mentioning the purpose for which they are intended, or if the judge has expressly authorized this or the Public Prosecutor's Office presiding over the phase of the process at the time of publication;

c) The transmission or recording of images or sound recordings relating to the performance of any procedural act, namely the hearing, unless the judge, by order, authorizes it; However, the transmission or recording of images or sound recording relating to a person who objects to this cannot be authorized;

d) The publication, by any means, of the identity of victims of sexual crimes, against honor or against the reserve of private life, before the hearing, or even after, if the offended party is under 18 years of age.

3. Until the decision on the publicity of the hearing is not yet authorized, under penalty of qualified disobedience, the narration of procedural acts prior to that when the judge, ex officio or upon request, has prohibited it under legal terms.

### **Article 65 [Times at which judicial acts are carried out; defendants arrested]**

1. Acts of ordinary business hours, the filing of appeals and the presentation of any requests, which must be made to the magistrate in charge of the case, at the secretariat or at the court, may be carried out every day, at the hours when the secretariat The courthouse must be open, except on Sundays, holidays or public holidays.

2. Judicial acts carried out in court, or outside the secretariat, must be carried out from sunrise to sunset.

3. Judgment hearings may continue at night and take place on Sundays, holidays or public holidays, if necessary for the smooth running of the process or to ensure the rights of those involved.

4. Trials of detained defendants, as well as those on release, may be held on vacation if the judge deems it necessary by means of a reasoned order, which can be appealed without suspensive effect.

5. The necessary acts to guarantee individual freedom and for the release of imprisoned defendants, or any other imposed due to urgent need, must be carried out on holidays, and even on Sundays and public holidays.

6. Acts of investigation of the process may be carried out on any day, even on Sunday, on a public holiday or vacation, at any time of the day or night, except for the inviolability of the home

of the citizen, regulated in accordance with article 246 of this Code. Under no circumstances, under penalty of nullity, can the interrogation of a defendant take place between 10 pm and 7 am.

### **Article 66 [Requirements for the validity of procedural acts]**

The acts of proceedings in which the judge, the Public Prosecutor's Office and the clerk intervene are valid, as long as they are signed by them and initialed on the pages that do not have their signatures, and the lawyers, the accused or the accusing party may also initial and sign, if you want.

### **Article 67 [Language and written form of acts and appointment of an interpreter]**

1. In procedural acts, both written and oral, the Portuguese language is used, under penalty of nullity.
2. Procedural acts that must be carried out in written form are written in a perfectly legible manner, containing no blank spaces that cannot be used, nor between lines, erasures or amendments that are not subject to reservations. Dates and numbers can be written in numbers, except for the indication in full of penalties, compensation amounts and other elements whose certainty is important to ensure.
3. When a person who does not know or master the Portuguese language has to intervene in the process, a suitable interpreter is appointed, at no cost to them, even if the entity presiding over the act or any of the procedural participants knows the language for that user. zada.
4. Typewriters or word processors may be used, in which case it is ensured, before signing, that the document has been fully reviewed and the entity that prepared it is identified.
5. Pre-printed formulas, electronic forms or stamps may also be used, to be completed with the respective text, as well as abbreviations with unambiguous meaning.
6. In case of manifest illegibility of the document, any interested procedural participant may request, free of charge, the respective typed transcription.
7. It is mandatory to mention the place, day, month and year of the act, as well as, in the case of an act that affects people's fundamental freedoms, the time of its occurrence, with reference to the moment of its beginning and conclusion.

### **Article 68 [Participation of deaf, hearing impaired or mute people]**

1. When a deaf, hearing impaired or mute person must make statements, the following rules must be observed:
  - a) The deaf or hard of hearing person is appointed a suitable interpreter for sign language, lip reading or written expression, whichever is most appropriate to the situation of the person concerned;
  - b) If the mute person knows how to write, they ask the questions orally and respond in writing. Otherwise and whenever required, a suitable interpreter will be appointed.
2. The lack of an interpreter results in the postponement of the procedure.
3. The provisions of the previous paragraphs are applicable at all stages of the process and regardless of the position of the interested party in the case.

### **Article 69 [Decision-making acts]**

1. The judges' decision-making acts take the form of:
  - a) Sentences, when they know the finality of the object of the process;
  - b) Orders, when they are aware of any interlocutory issue or when they put an end to the process outside the case provided for in the previous paragraph;
  - c) Judgments, when dealing with the decision of a collegial court.
2. The acts of the Public Prosecutor's Office take the form of orders.

3. The acts referred to in the previous paragraphs meet the formal requirements of written acts and when delivered orally are recorded in the record.
4. Decision-making acts are always justified, and the factual and legal reasons for the decision must be specified.

#### **Article 70. [Record or minutes]**

1. The record is the instrument intended to confirm the terms in which the procedural acts were carried out, the documentation of which is required by law and which the person who wrote it assisted, as well as to collect the declarations, requests, promotions and oral decision-making acts that have occurred before him.
2. The record relating to the contradictory debate and the hearing is called minutes and is additionally governed by the legal provisions that this Code requires it to apply.
3. The report contains, in addition to the requirements for written acts, mention of the following elements:
  - a) Identification of the people who intervened in the act;
  - b) Causes, if known, of the absence of the people whose intervention in the act was scheduled;
  - c) Specified description of the operations carried out, the intervention of each of the procedural participants, the statements made, the way they were done and the circumstances in which they were done, the documents presented or received and the results achieved, in order to guarantee the genuine expression of the occurrence;
  - d) Any relevant occurrence for assessing the evidence or regularity of the act.
4. The record or minutes have the same probative value as authentic and authenticated documents.

#### **Article 71 [Writing of the record or minutes]**

1. The drafting of the report is carried out by the court official, or by the criminal police official during the preparatory investigation, under the direction of the entity presiding over the act.
2. Whenever the report must be drawn up in a summary, it is the responsibility of the entity presiding over the act to ensure that the summary corresponds to the essentials of what has happened or the statements made, and may, for this purpose, dictate the content of the report or delegate, ex officio or upon request, to procedural participants or their representatives.
3. In case of alleged non-conformity between the content of what was dictated and what occurred, statements relating to the discrepancy are made, indicating the rectifications to be made, after which the entity presiding over the act makes a statement, after hearing the interested procedural participants who are present, a definitive decision supporting or modifying the initial wording.

#### **Article 72 [Registration and transcription]**

1. The official referred to in paragraph 1 of the previous article may write the report using stenographic, steno typic or other means other than ordinary writing, as well as using magnetophonic or audiovisual recording.
2. When stenographic, stenographic or other means other than ordinary writing are used, the official who used them, or, if this is impossible or absent, a suitable person, makes the transcription within the shortest possible time. Before signing, the entity that presided over the act ensures that the transcription is in compliance.
3. The stenographed sheets and the steno typed or recorded tapes are attached to the file, or, if this is impossible, duly stored after being sealed, numbered and identified with the process to which they refer. Mention is made in the record of all opening and closing of saved records by the entity carrying out the operation.

#### **Article 73 [Recovery of lost, misplaced or destroyed vehicle]**

1. When a document or part of it is lost, misplaced or destroyed, it must be reformed in the court in which the process took place or should take place in the first instance, even when there has been an appeal there.

2. The reform is ordered by the judge, ex officio or at the request of the Public Prosecutor's Office, the defendant, the assistant or the civil parties.
3. In the reform, the procedures provided for in the civil procedure law are followed in everything that is not specified in the following paragraphs:
  - a) The Public Prosecutor's Office, the accused, the assistant and the civil parties intervene in the conference;
  - b) The agreement of the intervenors, transcribed in the record, only supplies the process in civil matters, being merely informative in criminal matters.

#### **Article 74 [Call to court]**

1. Summoning a person to appear at a procedural event may be done by any means designed to inform them of the fact, including by telephone, with a quotation being made in the record as to the means used.
2. The call to court will normally be made by means of a judicial notification, which may be also by notice sent by post.
3. This notice will only be delivered to the recipient, who, to prove receipt, must sign the receipt, the model of which will be sent, together with the notice, by the court and which must be returned to the court immediately after being signed.
4. If the recipient is unwilling or unable to sign the receipt, it will be returned to the court with a declaration of the incident made by the postal employee. When the notice cannot be delivered to the recipient, it will immediately be returned to the court with this declaration, and notification will be made.
5. This notice will have the value and effect of notifications, as long as it is duly delivered to the recipient, assuming that delivery took place as soon as the receipt was signed by the recipient or the declaration of delivery was made by the distributor, unless it is proven the falsity of the signature or declaration.
6. Notifications must be made in the same way as summons in civil proceedings, and may also be carried out in the place where the person to be notified is found.
7. If the employee responsible for making the notification is informed that the person notified is absent in an uncertain part, he will certify this, with the certificate signed by two witnesses who confirm the absence; and if the magistrate, after employing all the means at his disposal for this purpose, is unable to ascertain the place where that person is, he will follow the process according to its terms without further steps for notification, observing, however, when to absent defendants, the provisions of this Code.
8. If the accused or the accusing party has nominated a specific person residing at the courthouse to receive notifications, they will be sent immediately in person or at a specific time.
9. Notifications to Public Prosecutor's Office magistrates will be made by those responsible for the section and all others may be made by due diligence officers, or agents of authority by order of the court, and the aforementioned section heads may also make those of the lawyers and solicitors you meet in the court building.
10. When the person to be notified is imprisoned in any prison establishment, the magistrate of the case will request the action, by simple letter, from the respective director, who, in turn, will order it to be carried out, with legal formalities, by the official who stops the effect designate.

#### **Article 75. [Notification to defendants, assistants, civil parties and lawyers and solicitors]**

1. Notifications may be made to the lawyer of the accused or the accusing party, except when the law requires or the magistrate orders the personal appearance of the person notified.
2. Notifications of the accused, the assistant and the civil parties may be made to the respective defender or lawyer. In particular, notifications regarding the accusation, archiving, decision on the contradictory debate, order that designates the day for judgment are highlighted.

ment, order of pronouncement and sentence, as well as all decisions that imply deprivation of liberty, which will have to be made to the person himself, under penalty of irremediable nullity.

#### **Article 76 [Requisition of employees]**

1. When any public official or employee of a public service concession company has to be summoned to court, whose appearance depends on the authorization of his/her hierarchical superior, he/she will be requested to do so. Leave will not be refused, unless there is an imperative need for service in which the employee cannot be replaced, and the reason for such refusal must be communicated in advance to the court. The lack of notification of refusal, or the court's non-acceptance of the reasons cited, results in immediate proceedings under the terms of article 81 of this Code.

2. If the license is refused and the presence of the official or employee who requested it cannot be dispensed with, the magistrate will determine a new day for the appearance, ordering him to notify and also request it with the necessary advance notice. If the requested person still does not appear and does not justify his absence or show that he was refused leave, the penalty set out in article 81 will be imposed. Any superior who refuses the license will incur the penalty of qualified disobedience.

#### **Article 77 [Execution of warrants by due diligence officers]**

1. Diligence officers must comply with the warrants delivered to them within five days, counting from delivery, or within that period certify the impossibility of compliance. This period may be extended by the judge if necessary.

2. Failure to comply with this article, without justifiable reason, subjects the officer to a fine of 100,000 to 500,000 dobra, imposed by the judge, without any other form of process and excluding disciplinary sanctions.

#### **Article 78 [Execution of warrants by police authorities]**

1. When the due diligence officer responsible for executing any warrants certifies that he cannot comply with them, the magistrate in charge of the case may, whenever he deems it appropriate, send new warrants to the respective police authority so that the latter can enforce them by his subordinates.

2. If the agent of the police authority carries out the requested diligence, the respective disciplinary process will be initiated against the due diligence officer who did not carry it out, whenever there are well-founded suspicions that the same officer acted with intent or guilt.

#### **Article 79. [Witnesses outside the area of jurisdiction]**

The judge may determine the mandatory appearance of witnesses residing outside the area of jurisdiction whenever their presence is considered essential, as the testimony to be produced by such a witness is considered likely to influence the decision of the case.

#### **Article 80 [Request for acts to be carried out in an area of different jurisdiction]**

1. Acts that must be carried out outside the area of jurisdiction may be requested by precatory or rogatory letters or by means of an official letter, telegram, telex, fax, telecopy or telephone.

2. All urgent measures that require this may be requested using the same means.

3. Precatory letters and warrants will be issued and complied with in the cases and in accordance with the terms of the civil procedure law. The deprecating magistrate, when deemed necessary, may request any clarifications or documents from the deprecating magistrate.

4. The letters will be fulfilled in their precise terms by the competent authority. If the magistrate to whom the letter is addressed is not the one competent to execute it, but another, he will send it to him, communicating the referral to the deprecating court. The same will be observed when the diligence is requested by official letter, telex, telefax, telecopy or telegram.

### **Article 81 [Unjustified absence of attendance]**

1. Any person duly notified or warned who fails to appear on the designated day, time and place, nor justify their absence within 5 days, will incur a fine of 100,000 to 500,000 dobbras, to be determined depending on their economic situation and social charges. and in compensation of equal importance in favor of the General Treasury of the Courts, with the fine and compensation set out in the respective record.

2. Any type of evidence, including testimonial evidence, is admissible to justify the absence, however, no more than three witnesses may be heard. The judge will assess the evidence produced according to his free assessment and will decide without appeal, after hearing the Public Prosecutor's Office.

If justification is given, the judge will declare the conviction null and void.

3. Regardless of the sanctions provided for in this article, the judge may order anyone, including the defendant, who has been absent without justification to appear under detention for the act in question, for the period strictly necessary for its performance, and under no circumstances may exceed 48 hours.

4. If people who have to testify or make statements are unable to appear in court, they may be heard at their residence, once this impossibility has been proven in accordance with paragraph 2 of this article.

5. If the offense is committed by the representative of the Public Prosecutor's Office, the respective hierarchical superior will be informed of the fact; if it is by the defendant's defender, the provisions of article 300 of this Code will apply, with the fact being communicated to the entity that supervises the lawyers' ethics.

### **Article 82. [Request for clarifications, documents or essential steps]**

All magistrates may request directly from any public or private bodies or organizations any clarifications, documents or steps that are essential for any process and that fall within their competence. When the requested acts are urgent, they prefer any other service.

### **Article 83 [General deadline for orders and promotions of judges]**

1. In urgent cases, particularly involving arrested defendants, the magistrates' orders or promotions are issued immediately or, if this is not possible, within a maximum period of 48 hours.

2. In other processes, magistrates must issue all their orders and make their promotions within five days, counting from the conclusion or view, except in cases of large accumulation of service or when a lengthy study of the process is necessary or in cases in which the code establishes special deadlines, subjecting them, in the case of a crime, to the respective disciplinary sanctions.

### **Article 84.º [Deadline for the acts of the secretary]**

1. The clerk must carry out the processes concluded or with a view and issue the warrants within five days, incurring, when violating this provision, a fine of 100,000 to 500,000 dobbras, imposed by the judge, ex officio or at the request of the Public Prosecutor's Office without any other form of process and without disciplinary sanctions.

2. The Public Prosecutor's Office, when he was not the one who promoted its application, and the official will be heard about the offense, and the judge may, if he deems it justified, exempt him from the penalty.

3. When defendants are arrested, the process will be concluded and reviewed immediately with the neglect of any other services, with the penalty referred to in paragraph 1 of this provision being applicable to the negligent employee.

### **Article 85 [Commitment and oath]**

1. Experts, translators and interpreters will always make a commitment to the judge, under his honor, to carry out their duties faithfully. For this purpose, the judge asks whether

They promise on their honor to faithfully carry out the functions entrusted to them, to which they must respond affirmatively.

2. The witnesses who testify in the process will make an identical commitment, asking them

The judge promises them, on his honor, to tell the truth, to which they must respond in the affirmative-mind.

3. The judge must always warn people who make an honorary commitment that they are committing a crime of false declarations and the corresponding sanction.

### **Article 86. [Those who do not take an oath]**

They will never make a commitment of honor:

a) Children under fourteen years of age;

b) Those offended, participants and those who constitute assistants, except when the law expressly determines so, c) Other people who cannot

be witnesses.

## **CHAPTER III Nullities and illegitimacy**

### **Section I Nullities**

#### **Article 87 [Nullities]**

1. In addition to others expressly provided for in this code, the following are null and void in criminal proceedings:

a) The lack or insufficiency of a criminal offense and the subsequent omission of steps that should be considered essential for discovering the truth;

b) The use of one form of process in cases where the law prescribes another;

c) Failure to appoint a suitable interpreter to the accused, when he does not speak Portuguese and does not understand it or cannot make himself understood;

d) Failure to appoint an unofficial defender to the accused or defendant in cases where assistance is mandatory;

e) The lack of personal notification, when the law expressly requires it, namely those provided for in paragraph 2 of article 75;

f) The failure to indicate the list of witnesses in the prosecution and the failure to deliver the list of witnesses by the defense within the legal deadlines.

g) The lack of the legal number of judges or jurors who must constitute the court;

h) The discussion and judgment of the case in the absence of the Public Prosecutor's Office or the defendant or his defender, when the law requires their attendance.

2. The nullities referred to in this article nullify the act in which they occur and subsequent actions that may affect them. The decision that declares them determines the acts that it considers to be annulled and will ensure that the nullity is remedied.

3. The nullity of paragraph a) of no. the omitted acts can no longer be carried out or their performance can no longer benefit the discovery of the truth.

4. The nullity of paragraph b) of paragraph 1 will only result in the annulment of acts that cannot be used and the judge or court that finds it appropriate will order the strictly necessary measures to be carried out so that the process comes as close as possible to the manner established by law.

5. The nullity of paragraph c) of paragraph 1 will be remedied if, having been subsequently appointed as an interpreter, the defendant declares, through him, that he ratifies the case.

6. The nullity of paragraph d) of paragraph 1, committed before the order of indictment or equivalent will be remedied, if a defender is subsequently appointed or constituted and he does not file an argument within five days, counting from the day in which he joins the the power of attorney or in which the judge is notified of the appointment. If the case has reached trial and a lawyer has been appointed or appointed, the nullity will be remedied if it is not argued until the defendant is interrogated. If this nullity is committed at the trial hearing, it cannot be argued when the sentence is acquittal.

7. The nullity of paragraph f) of paragraph 1 will be remedied if those to whom the list of witnesses should be delivered declare that they waive delivery.

### **Article 88 [Regimen for arguing and recognizing nullities]**

1. The nullities referred to in the previous article that should not be considered remedied can be argued at any stage of the process and courts of any category must take cognizance of them, regardless of complaints from interested parties, except as provided in the paragraphs following.

2. The nullity of paragraph 1 al. b) of the previous article, when it consists of using a more solemn form of common process instead of a less solemn one, it can only be argued until the day on which the trial hearing takes place.

3. The nullities of paragraph 1 als.) e) and f), of the previous article can only be argued until the defendant is interrogated at the trial hearing.

4. The superior court may always consider any nullity that does not affect the fair decision of the case to be correct.

### **Article 89 [Irregularities of the process]**

1. Any irregularity in the process, not specifically foreseen or not understood in article 87, can only lead to the annulment of the act to which it refers and the subsequent terms that it may affect, when it has been argued by those interested in the act itself, if it are present or duly represented or, if they are not, within five days, counting from the day in which they were notified of any term of the process or intervened in any act carried out therein, after the nullity has been committed.

2. The judge should only consider the allegation of nullities referred to in this article, when there was a complaint in the act in which they occurred or if, having been subsequently raised, they could influence the examination and decision of the case; but he may, of his own motion, order any fault or irregularity to be remedied, when the process is concluded for the first time after it was committed.

## **Section II Illegitimacy**

### **Article 90 [Illegitimacy in semi-public crimes]**

1. When the criminal action depends on a complaint, if the applicant does not have this right, he will be considered an illegitimate party ex officio or at the request of the Public Prosecutor's Office or interested parties, at any time in the case and the defendant will be acquitted of the case, if the case comes to trial.

2. The process may follow its terms as long as anyone who legally can do so appears in court to promote them, without prejudice to the expiry of the limitation period for the right to complain.

### **Article 91 [Illegitimacy of the assistant in public and semi-public crimes]**

When the criminal action is public or depends on a complaint, if someone who should not be admitted as an accusing party, they will be judged as an illegitimate party, but only the acts of the process that exclusively concern them or those that, having been requested by them, will be annulled. , are not ratified by the Public Prosecutor's Office or deemed necessary by the judge to establish the truth.

### **Article 92 [Irregular representation of the accused or assistant]**

If someone who has not been officially appointed or legally constituted appears in the process as a representative of the accused or the accusing party, the acts requested by him/her will be declared null and void. The accusing party and the defendant may, at any time during the case until the final sentence, ratify these unlawful acts carried out in their name.

## **CHAPTER IV Two Incidents**

### **Section I Impediments and suspicions**

#### **Article 93 [Judge impediments]**

1. No judge may intervene in a criminal proceeding, namely in a trial:

- a) When he, his spouse or civil partner is offended, accused or may become an accusing party in the process and still has the right to civil compensation;
- b) When he is offended, accused or may be the accusing party and even when he is entitled to civil compensation, any ascendant, descendant, collateral up to the third degree or similar in the same degrees, ward or guardian of him, his spouse or de facto partner ;
- c) When having intervened in the process as an expert, as a representative of the Public Prosecutor's Office or as a registered lawyer or unofficial defender;
- d) When an action for damages or accusation in a criminal action has been admitted against him or her for acts committed in the exercise of his or her functions or because of them and the defendant, the offended party is a participant, accusing party, co-accused or author in the action, the accusing party in the criminal proceedings is the spouse or de facto partner of any of them or any ascendant, descendant, brother or similar in the same degrees;
- e) When you have testified or have to testify as a witness;
- f) When in preparatory or contradictory instruction he has ordered and maintained the pre-emptive arrest of the defendant or has presided over the contradictory instruction;

2. No judge may intervene in the decision of an appeal filed against a judgment, sentence or order given by him or by any of his relatives, or equivalent, in a direct line, in the second degree of the collateral line, or similar in the same degrees.

3. Impediments must be declared ex officio by the judge and, when they are not, the Public Prosecutor's Office must promote their declaration, and not only the accusing party, but also the accused may also request it, as soon as he is admitted to intervene in the process .

4. If the judge has been given as a witness, he must declare, under oath, by order in the case, whether he is aware of facts that could influence the decision of the case. If so, there will be an impediment and you will not be able to do without your testimony, and if not, you will no longer be a witness.

5. The judge who has any impediment must declare it immediately by order in the case file, immediately referring the case to the competent court, when it should take place in another court, or passing it on to whoever should replace him, in other cases.

6. If the impediment concerns judges of the Supreme Court of Justice, the case will pass to the immediate judge and, if it concerns judges of a collective court of first instance, the judge who should replace them will be called.

#### **Article 94 [Public Prosecutor's Office Impediments]**

1. The provisions of paragraphs. a), b), d) and e), no. 1, of article 93, is applicable to the representative of the Public Prosecutor's Office, who also cannot act in any criminal proceeding when he or she has been a lawyer or judge.

2. The representative of the Public Prosecutor's Office who has any impediment must declare it immediately in the process, promoting its referral to the competent court, if applicable, or passing the case to whoever should replace it, in other cases.

3. If the impediment is not declared by the representative of the Public Prosecutor's Office, the judge must judge it impeded ex officio, or at the request of the accusing party or the accused, after being admitted to intervene in the process.

4. The provisions of paragraph 4 of article 93 are applicable to public prosecutors.

### **Article 95. [Impediments of clerks, experts and interpreters]**

1. The provisions of paragraphs. a), b) and d), paragraph 1, of article 93, when there has been a conviction or pronouncement in the actions to which this last number refers, and to experts and interpreters the provisions of these numbers and also paragraph. c), paragraph 1, of the same article. The Head of State, the Prime Minister, members of the central government and deputies may also not be appointed as experts or interpreters, violating their immunities, and the court clerk may not be appointed as an interpreter.

2. The origin of the grounds for impediment, whether declared by the person prevented or requested to be declared by the Public Prosecutor's Office, the accusing party or the accused, will always be assessed by the judge, who must also, of his own motion, judge the impediment to be valid, if you are aware of it.

3. Once the impediment has been declared by order, the person who must replace the impeded person will serve as clerk of the process and, as an expert or interpreter, another person appointed by the judge.

### **Article 96 [Incompatibility of judges]**

Two or more judges who are spouses or who live in similar situations, relatives or similar, in a straight line, cannot be part of any collective court of first instance, nor intervene in any decision to be made by the Supreme Court of Justice, in criminal matters. , or in the second degree of the collateral line.

### **Article 97 [Incompatibilities of lawyers]**

1. No lawyer or prosecutor may exercise his or her duties in a criminal action in which his or her spouse or those living in similar situations, in a common-law relationship, or any ascendant, descendant, sibling or similar person in the same month, intervenes as a judge or representative of the Public Prosecutor's Office. - mo grey.

2. If the appointment of the lawyer or prosecutor is prior to the inauguration of the judge or representative of the Public Prosecutor's Office in that region, those will continue to intervene in the process and will be considered impeded; and, if it is later, the judge, as soon as he becomes aware of the fact, will judge the lawyer or prosecutor prevented by order, ex officio, or at the request of the Public Prosecutor's Office, the accused, the accusing party or the person prevented.

3. Whoever has intervened as a judge in any case cannot be appointed as a lawyer or appointed as a defender.

### **Article 98 [Deduction of impediments]**

1. The impediments mentioned in paragraphs. a), b) and f), paragraph 1, of article 93 may be deducted at any time in the process. The remainder can only be deducted until the final decision is made.

2. The impediment will be deducted through a simple request, immediately attaching supporting documents. If the impediment is declared against the judge, the judge, by order in the case file, will say whether he recognizes it or not, and this order will be subject to an appeal, which will be obligatorily filed by the Public Prosecutor's Office, when the judge does not declare himself impeded, and will then be raised separately and without suspensive effect. If the impediment is not filed against the judge, the judge will decide on its merits by means of an order that can be appealed, which will only be raised by the first person to be brought forward and who will be appealed immediately.

3. If the impediment is reported to a judge of the Supreme Court of Justice and he does not recognize it, the Plenary of that court will decide on it.

4. When the impediment is judged valid, the acts carried out by the impeded person will be declared null, but, if they can no longer be repeated, they will be considered valid, if the judge understands that there is no harm to the discovery of the truth.

### **Article 99 [Effect of deduction of impediments]**

1. The allegation of impediments suspends the progress of the process, but, if the judge understands that it is a simple delaying procedure, he will order that the process follows its terms together with those of the incident.

2. During the incident, acts may be carried out whose delay could cause irreparable damage.

### **Article 100 [Suspicion of judges]**

1. The judge cannot voluntarily declare himself a suspect, but the Public Prosecutor's Office, the assistant, the accusing party or the accused may, as soon as he is admitted to intervene in the process, refuse him as such, for any of the following reasons :

a) If there is kinship or affinity in the fourth degree of the collateral line between the judge, their spouse or those living in similar situations and the accusing party, the accused or the offended party;

b) If there is or has been any action, not included in paragraph. d), paragraph 1, of article 93, in which the judge, his spouse or those living in similar situations or any relative of any of them in a direct line or in the 2nd degree of the line are or have been a party, offended, participant or defendant. the offended party, the accusing party or the defendant or any ascendant or descendant or the spouse, de facto partner of any of them, has collateral and is or has been a judge of that case or is directly interested in it;

c) If the judge is part of the management or administration of any collective body or company that is the offended party or the accusing party or if he is offended, the accusing party or accused any of the other members of the management or administration for facts concerning him/her;

d) If the judge received donations before or after the proceedings were initiated and because of them;

e) If the judge, his or her spouse or those living in similar situations or any direct lineal relative is a creditor or debtor of the accused, the offended party or the accusing party;

f) If the judge, his/her spouse or spouse living in similar situations or any ascendant or descendant of any of them, is the presumed heir of the offended party, the accused or the accusing party;

g) If there are serious reasons for enmity between the judge and the offended party, the accusing party or the accused.

2. When any action has been taken against the judge without serious reason, solely with the aim of having him declared a suspect, or when, with the same intention, a claim is acquired against him, his spouse or someone living in a similar situation, relatives or similar to the straight line, or if any other fraud is used to substantiate a suspicion, the judge accused of being a suspect will declare it in the case file, and the case will immediately go up to the Supreme Court of Justice so that, after carrying out the necessary steps, decide in conference whether or not there are grounds for suspicion.

3. The provisions in the numbers and previous paragraph are equally applicable, insofar as they may be, to substitutes for the judge, Public Prosecutor's Office agents, clerks, experts and interpreters.

4. The judge may ask the President of the Supreme Court of Justice to excuse him from intervening in a case when any of the circumstances in paragraph 1 occur.

### **Article 101 [Deduction of suspicion]**

1. The suspicion must be deduced within five days, counting from the day in which the person refusing intervened in the process, after the basis of the suspicion is known, by means of a request.

ment in which the facts that supported it are clearly and specifically articulated, immediately attaching supporting documents and a list of witnesses, which may not exceed three for each fact.

2. The application and documents will be filed as an attachment, with the completed files immediately sent to the judge.
3. The judge, if he is the one refused, will respond to the suspicion within five days, after which the clerk will charge the case. Failure to respond is tantamount to confession.
4. If the judge does not respond or confess the suspicion, the clerk will forward the completed records to the substitute judge, who is responsible for granting the further terms of the process.
5. If the judge denies the facts alleged by the refuser or declares that they do not constitute grounds for suspicion, he may immediately add documents or indicate witnesses, up to three for each fact, and then the completed process will be sent to the substitute judge to grant to the later terms of the incident.
6. Witnesses to the incident will be questioned by the judge, writing their statements in summary, and, once they are finished, the process will soon be concluded for the judge to issue an order within two days.
7. If the suspicion is judged to be valid, the judge who must replace the suspect will grant the further terms of the process.
8. If a judge declares that any of the cases indicated in article 100 has occurred, the case files will be sent to the Supreme Court of Justice within three days and distributed and judged there like grievances in civil matters, however, due diligence will be carried out necessary to ascertain the truth. The judge suspected of being an accused will grant urgent acts in the main proceedings.
9. If suspicion has been placed against a judge who is part of a collective court of first instance other than the one where the case is taking place, the incident will be referred to him so that he can respond to the accusation within five days, following the other terms of paragraphs 4 and 5 and the judge of the district where the process takes place will decide in the final.
10. If the suspicion has been filed against any judge of the Supreme Court of Justice, the request will be addressed to the President of that court who will order the person refused to respond by the first session of the Plenum, following the other terms indicated in the Nos. 4 and 5, in the applicable part, with the president of the court exercising the functions of judge of the incident, being able to delegate to the judge from any area of jurisdiction the questioning of witnesses and making a final decision on the respective section.
11. If the suspicion is judged to be valid, the judge will be replaced by the next judge, according to the order in which they must notice.
12. If the person refused is an agent of the Public Prosecutor's Office or any other official, the judge will order him/her to respond within five days and will make the final decision, once evidence has been produced, when necessary. Failure to respond amounts to confession.
13. If the case is in the preparatory investigation phase, and the Public Prosecution judge is refused, the suspicion will be decided by his hierarchical superior, in accordance with the previous paragraphs.
14. If the person refusing or refused states, in their request or response, that they have not yet been able to obtain the necessary documents, the judge will set a deadline for this purpose, if he deems it justified.

## **Article 102 [Effect of deducing suspicion]**

1. Once the suspicion has been raised, the progress of the case will be suspended until it is judged, but the judge responsible for hearing it may order and carry out any urgent acts in the main case.
2. If the judge against whom the incident of suspicion was raised understands that this is a mere dilatory expedient, he will not suspend the progress of the process, which will follow its terms together with those of the incident.

3. All acts carried out by the rejected judge or official will be valid until the moment the suspicion is raised.
4. In the case of paragraph 1 of this article, the provisions of paragraph 4 of article 98 will apply to acts carried out by the suspect after the suspicion has been raised.
5. The final decision on suspicions can be appealed without suspensive effect.

#### **Article 103 [Instrumental bad faith]**

If the court understands that the incidents are mere delaying maneuvers, in the final decision on the incident, the person who raised the incident, if it is not the Public Prosecutor's Office, will be sentenced to a fine of 2,000,000.00 to 10,000,000.00 doublings. in quarrel or correctional processes and from 1,000,000.00 to 5,000,000.00 doubles in other processes.

## **Section II Falsehood**

#### **Article 104. [Admissibility and appeal regime for incidents of falsehood]**

1. The incident of falsehood can only be raised against documents or judicial acts, when it may influence the decision of the case. Otherwise, the court will not admit it.
2. There will be an appeal against the decision to accept or reject the incident, which the higher court will only hear about when it considers any decision on the main issue.
3. The court's rejection of the incident does not preclude participation in the crime of forgery.

#### **Article 105. [When the incident of falsehood can be raised]**

1. The incident of falsehood may be raised at any time in the process by the Public Prosecutor, the assistant, the accusing party or the accused or defendant.
2. The court may of its own motion declare a document or act false, even if the falsehood has not been deduced, if it appears in the file, and for this purpose, when it deems it necessary, order appropriate measures to be taken.

#### **Article 106 [Argument after the final decision]**

1. After the final decision, falsehood can only be argued when it was known after the decision was made and an appeal was filed against it.
2. The Supreme Court of Justice will admit or reject the incident and, if it admits it, it will send the case to the first instance to carry out examinations and the questioning of witnesses, when necessary.

#### **Article 107 [Process of falsehood incident]**

1. Falsehood will be deduced by simple request, indicating, from the outset, the means of proof, and witnesses may be offered in a number that does not exceed three for each fact that may be of interest in the decision of the incident, and the facts must be indicated to which they testify. The court will not admit evidence on facts that it deems unnecessary for the decision, nor that which could represent a dilatory expedient.
2. The documents offered for proof must be attached to the application, unless the applicant declares that he cannot yet obtain them, because, in this case, the court may grant a deadline for this purpose, if it deems it justified.
3. Once the evidence has been produced, the files will be sent to the Public Prosecutor's Office for two days and the accusing party and the defendant will then be notified so that, within the same period of time, they can say whatever is convenient for them. .
4. The incident will take place in the same process in which it arises and, after the deadlines in the previous paragraph, will be immediately judged.

#### **Article 108 [Effect of falsehood incident]**

1. The incident of falsehood, when raised in the first instance, before the trial hearing, if the judge admits it, suspends the progress of the process only for the time necessary for the production of evidence and decision.
2. When the incident is raised after the indictment order or equivalent, the witnesses who do not have to be questioned by letter will be at the trial hearing, and must testify before the others.

#### **Article 109. Deduction of the incident of falsehood at the trial hearing**

When the incident is raised at the trial hearing and the judge admits it, the hearing will be postponed if evidence cannot be produced immediately.

#### **Article 110 [Bad faith regarding falsehood incident]**

The provisions of article 103 apply to this incident.

### **Section III Mental alienation of the defendant**

#### **Article 111. [Medical-forensic examination in case of suspicion regarding the mental integrity of the defendant]**

1. When justifiable doubts are raised about the mental integrity of the defendant, so that irresponsibility can be suspected, the judge must immediately order a medical-psychiatric examination.
2. The examination, to which this article refers, must be carried out at any time during the process and even after a conviction has been handed down.
3. When the judge does not order the examination ex officio, it must be carried out as soon as the Public Prosecutor's Office promotes it or the defendant, his ancestors, descendants or spouse who is not separated from persons and property, or in a de facto union, so requests, who, for this purpose, will be allowed to intervene in the incident, if the judge does not understand that it is a simple dilatory expedient.
4. This incident will be processed by attachment.

#### **Article 112. [Lack of mental integrity subsequent to the commission of the offense]**

A medical-psychiatric examination of the defendant will be ordered, even though it may be assumed that his lack of mental integrity occurred after the commission of the crime.

#### **Article 113. [Appointment of the unofficial defender in case of lack of mental integrity]**

1. If the examination concludes that the accused is lacking in mental integrity, resulting in irresponsibility or doubts about his responsibility, he will be immediately appointed an unofficial defender, if he does not have a lawyer appointed, and the ascendants, descendants, spouses who are not separated from persons and property and are living together may also choose a lawyer who, together with that defender, protects the interests of the same defendant.
2. When the people indicated in this article do not agree on the choice of lawyer, the appointment of the spouse or equivalent will prevail; in the absence of these, that of the ascendant of the closest degree, and, failing that, that of the closest descendant. If there is more than one ascendant or descendant of the same degree, in the absence of agreement, the court will decide, among the appointed lawyers.
3. If the case is under judicial secrecy, the representative of the accused or ascendants, descendants, spouse or equivalent, will only be heard and may intervene to take or stop any measures determined by the mental state of the accused, and must This effect detaches the incident process.

**Article 114. [Hearing of ascendants, descendants and spouse and similar]**

Ascendants, descendants, spouses not separated from persons and property or equivalent, even if they have not appointed a lawyer in the process, will be heard by the court, when they reside in its area of jurisdiction or present themselves spontaneously, whenever the judge takes any measure regarding the defendant considered irresponsible or cease any measure already taken.

**Article 115 [Incident raised during the preparatory investigation or before the trial]**

1. If the suspicion regarding the mental integrity of the defendant has been raised during the preparatory investigation, its progress will not be suspended; However, the medical-psychiatric examination and related measures will be carried out with the utmost urgency and no order will be pronounced or issued designating a day for trial without the incident having been decided.
2. The judge, even if he has issued an order of indictment or equivalent with finality and res judicata, may always, ex officio, order new steps in the process that he deems necessary to ascertain the defendant's mental state and to enable experts to formulate their opinion. judgment.
3. These measures may also be requested by the Public Prosecutor's Office, the accusing party, the accused, their unofficial defender, the lawyer for the ascendants, descendants, spouse or equivalent or by experts, but the judge will only order them when necessary.
4. If suspicions about the defendant's mental state appear after the order of indictment or equivalent, the terms of the process will be suspended, unless the incident represents a simple dilatory expedient.
5. If the defendant is arrested, he will remain under arrest, even if, in order to carry out the examination or due to the defendant's condition, it is necessary to admit him to a hospital or his own establishment.

**Article 116 [Effect of declaration of irresponsibility before trial]**

1. If the accused is declared unchargeable before trial, the accusation will be null and void. If non-imputability is declared at trial, the defendant will be acquitted of the charge.
2. When it is shown that the defendant's lack of mental integrity was subsequent to the commission of the offense, the execution of the order of indictment or equivalent will be suspended, as well as the subsequent terms of the process, including the execution of the sentence and compliance of the sentence, until the defendant regains full use of his mental faculties.

**Article 117 [Incident arising during the execution of the sentencing decision]**

If suspicions about the mental state of the accused appear during the execution of the sentence and the medical-psychiatric examination and other measures ordered reveal that the lack of mental integrity could have determined irresponsibility for the offense for which he was convicted, a request may be made. the review of the sentence under this code.

**Article 118 [Provisional security measures]**

Defendants may be subjected, even during the process, to provisional security measures as long as these can be applied in the sentencing decision and become necessary to avoid serious danger of the repetition of criminal acts, applying with the necessary adaptations , the provision for preventive detention.

**Article 119. [Internment of non-imputable persons]**

1. When there is sufficient evidence that the defendant who is not responsible for lack of mental integrity is dangerous, in accordance with article 85 of the Penal Code, the mental incident will continue in the same court, to prove the fact provided for by law and its perpetration by the insane person and the other requirements required by that precept for declaring criminal danger and applying the security measure, observing, with the necessary adaptations, the terms of the common process relating to defense, evidence and trial.

2. If the defendant is not deemed to be dangerous, under the terms of that paragraph, but his condition requires him to be hospitalized, the judge may authorize the hospitalization, subject to the family or administrative authority's responsibility to carry it out.

#### **Article 120. [Termination of the internment security measure]**

1. Internment ordered under the terms of the previous article, when the defendant is dangerous, may only cease by decision of the judge in the case when the interned person is cured or should be considered harmless, applying the rules regarding the execution of such measure and the provisions of this incident.

2. The judge may always order, ex officio or at the request of the Public Prosecutor's Office, the offended party, the accusing party, the defendant, the spouse not separated from persons and property or equivalent, ascending or descending, the examination of the interned person by experts from the establishment or outside it and the other steps deemed necessary, ultimately deciding whether or not the interned person should be released.

3. The release of the interned person may be ordered unofficially, promoted by the Public Ministry or requested by the interested party, their ancestors, descendants, spouse not separated from persons and property or equivalent and upon proposal of the director of the establishment.

#### **Article 121 [Placement in a charitable establishment]**

When the interned person has to leave because he is cured or considers himself harmless, if he does not have a family to whom he will be handed over and is destitute or unable to acquire means of subsistence through his work, the court must ensure that he is placed in an appropriate charitable establishment. .

#### **Article 122. [Destination of the hospitalized person, at the end of hospitalization]**

If, during the execution of the sentence or security measure, any illness or disorder occurs to the convict which, seriously affecting his mental integrity, leads to hospitalization, this execution will be suspended, in accordance with the Penal Code.

## **CHAPTER V Exceptions**

### **Section I General provisions**

#### **Article 123 [List of exceptions]**

Exceptions are:

- 1st Incompetence;
- 2º Lis pendens;
- 3rd The case judged;
- 4th The prescription.

#### **Article 124 [Legitimacy for deduction and knowledge of exceptions]**

The exceptions referred to in the previous article must be deduced by the Public Prosecutor's Office, the assistant, the accusing party or the accused, and the courts must also hear about them ex officio.

#### **Article 125 [Deduction and procedures for exceptions]**

1. Exceptions will be deduced or known at any time in the process until a final decision is made.

2. The exception of lack of jurisdiction on the grounds that the competent court is that of another territorial district can only be raised or declared up to the day on which the trial hearing takes place in the first instance.
3. Whoever makes the exceptions must immediately offer the evidence and the judge can order the measures he deems necessary, although examinations or inspections cannot be requested.
4. Once the exception is made, the opposing party and the Public Prosecutor's Office, if it is not the applicant, will be heard to say what is offered to them within five days, followed by the production of evidence.
5. The exceptions of *res judicata* and *lis pendens* can only be proven by documents.

#### **Article 126 [Restrictions on testimonial evidence in the processing of exceptions]**

1. Testimonial evidence is only admitted in the first instance and if the list has been offered with sufficient advance notice so that it can be notified to the parties, up to three days before the trial hearing takes place.
2. Only three witnesses can be offered for each fact to decide the exception and, if it is deducted after the end of the investigation, they will only be questioned at the trial hearing, before those who must testify about the case.
3. Testimonies will be oral, unless the parties do not expressly waive the appeal.
4. The judge may waive this evidence if he deems the evidence in the case to be sufficient.
5. The court will hear the exception as soon as the evidence offered is produced.

## **Section II Incompetence**

#### **Article 127 [Exception of incompetence]**

An exception of incompetence may be raised whenever the case must be heard by a court of nationality, nature, category or area of jurisdiction other than that where the case is pending.

#### **Article 128 [Effect of the court's lack of jurisdiction]**

1. If the exception is judged to be valid, the case will be referred to the competent court, if you are of Sao Tome nationality, and this will only annul the acts that would not have been carried out if the case had taken place before it and those that must be repeated for him to become aware of the cause.
2. The competent court may order the repetition of any acts in the process that were carried out by the incompetent court and could influence the decision.
3. If the São Tomé courts do not have jurisdiction to deal with the crime, the case will be archived.

## **Section III Lis pendens**

#### **Article 129 [Lis pendens]**

1. If it is shown that a criminal proceeding against the same defendant is being carried out in another court for the same punishable act, the terms subsequent to the accusation or pronouncement will be suspended, until it is determined in which court the proceeding should take place.
2. When it is determined that another court should be preferred or when, in the event of a conflict of jurisdiction and competence, so has been decided, the entire process will be referred to that court.

## Section IV Case res judicata

### Article 130. [Case judged acquittal due to lack of typicality or extinction of the action]

1. If in criminal proceedings it is decided, by judgment, sentence or order with finality and res judicata, that the facts contained in the case file do not constitute an infraction, or that the criminal action has been terminated as regards all agents, no new action may be proposed criminal offense for the same acts against any person.
2. If the court finds by final decision that there is insufficient proof of any element of the crime, it cannot continue the criminal proceedings with the same evidence against any defendant.

### Article 131 [Case judged personal acquittal]

When by a judgment, sentence or order, with finality and res judicata, it has been decided that a defendant did not commit certain acts, that he is not responsible for them or that the respective criminal action has been extinguished, a new criminal action cannot be brought against him for crime constituted, in whole or in part, by these facts, even if participation of different natures is attributed to it.

### Article 132 [Acquittal due to lack of evidence]

If a court acquits a defendant due to lack of evidence, a new criminal action may not be brought against him, consisting in whole or in part of the same facts for which he responded, even if he is attributed with participation of a different nature.

### Article 133 [Abstention from accusation and dismissal]

If an accused has not been pronounced or is dismissed by a final and unappealable decision, due to lack of evidence, or if, in relation to him and for the same reason, a final and unappealable decision has been made, equivalent to that of non-indictment or dismissal, you will not be able to continue the process against him with the same evidence.

### Article 134 [Case judged on a non-criminal preliminary issue]

In the case provided for in article 3 of this code, the decision given by the respective court will constitute res judicata in relation to the issue that has been definitively judged there, for the criminal action that was dependent on that decision.

### Article 135 [Case judged condemnatory]

The definitive conviction handed down in the criminal action will constitute a res judicata, regarding the existence and qualification of the punishable fact and regarding the determination of its agents, even in non-criminal actions in which rights that depend on the existence of a crime are discussed.

### Article 136 [Effects of the acquittal sentence in non-criminal proceedings]

The acquittal sentence, handed down in criminal matters and final, will constitute, in non-criminal actions, a simple legal presumption of the non-existence of the facts that constitute the crime, or that the defendants did not commit it, according to what has been judged, a presumption that may be rebutted by evidence to the contrary.

## Section V of the prescription

### Article 137 [Prescription]

The terms, deadlines and effects of the prescription and the causes for its interruption are established in criminal law; the way to deduce and judge it is that prescribed in articles 124 and following.

## CHAPTER VI Justice tax and fines

### Article 138 [Justice tax]

1. The defendant, in the case of conviction, will pay a court tax to the State, which the judge will arbitrate in the final sentence within the limits prescribed by law, taking into account the process and the material situation of the offender.
2. If several defendants are jointly liable, each one will be assessed the respective tax, within the legal limits, and their liability will be limited to the tax for which they were individually convicted.
3. Each defendant will pay a single court tax, regardless of the number of crimes for which he is responsible on the same occasion and the number of cases initiated against him, as long as they are judged jointly.
4. If a defendant is acquitted for one or more crimes and convicted of others, he will pay the court tax corresponding to the form of procedure applicable to the most serious crime for which he was convicted, which will be applied to him within the respective legal limits.
5. In cases in which there is an assistant, if he or she falls to the end, he or she will pay the court fee that the judge arbitrates within the legal limits, taking into account the process and the material situation of the party. If several people have become assistants, each one will pay the respective court tax and will be responsible for that alone.
6. If a defendant, accused of several crimes, is acquitted by some and convicted by others, with an assistant in one or more of them, each will be sentenced to the respective court tax, which will be fixed for the assistant within the legal limits corresponding to the form of prosecution of the crimes of which the defendant is acquitted and for the defendant within the limits corresponding to the form of prosecution of the most serious crime for which he was convicted.
7. Justice tax will also be due in other cases prescribed by law and the amounts established by law will be added to it.

### Article 139 [Emoluments to defenders and compensation to witnesses]

1. The emoluments due to unofficial defenders and compensation to witnesses called to testify at the trial hearing, who request it, will be arbitrated in the final sentence or ruling.
2. If the witnesses have testified before the trial hearing, the compensation will be arbitrated by the judge in the inquiry report, if the witness requests it before the end.
3. Any travel expenses incurred will also be paid to witnesses and experts.
4. The fees and compensation due to unofficial defenders, witnesses, experts, translators and interpreters will be paid, in the case of conviction, by the accused and, in the case of acquittal, by the assistant, if any.
5. If these expenses are common to several defendants or people who have become assistants, they will be jointly liable for them.

## TITLE II *The Process itself*

## CHAPTER I News of the infraction

### Article 140. [Acquisition of news of the infraction]

1. News of the crime is acquired by:
  - a) Own knowledge on the part of the authority responsible for the investigation;
  - b) Participation carried out by other authorities;
  - c) Complaint presented by any citizen if it is a crime of a public nature;

d) Complaint, presented by the holders of the offended right, in the case of crimes of a semi-public nature.

2. The Public Prosecutor's Office is immediately informed of the news of the crime, if it was not the latter that ordered the investigation.

### **Article 141 [Mandatory participation]**

1. Participation to the Public Prosecutor's Office is mandatory:

- a) To the police authorities, regarding all crimes of which they are aware.
- b) For public servants, public managers and any other public agents or authorities who become aware of crimes, in the exercise of their functions or because of them.

2. In the case of a crime of a semi-public nature, participation referred to in this article will only be mandatory if the holder of the right to complain has exercised it.

### **Article 142 [Optional complaint]**

A complaint can be made by any citizen regarding crimes of a public nature, and can be presented to any authority, which will communicate it to the competent Public Prosecutor's Office agent, or directly to the latter.

### **Article 143. [News report or report]**

1. Participation is carried out by means of a document, which will contain whenever possible:

- a) The elements identifying the perpetrator of the crime or his characteristic signs and any other elements that may contribute to his identification;
- b) The identification details of the offended party;
- c) The factualism that constitutes the crime;
- d) The day, time and place and the circumstances in which the crime was committed;
- e) The means of proof already known;
- f) If knowledge of the offense has not been acquired by the participant, how he acquired it.

2. Once the complaint has been presented verbally, the authority that receives it will draw up the respective report, which will contain the elements referred to in the previous paragraph, as well as the identification of the complainant.

3. Once the complaint has been presented in writing, it must be signed by the complainant or, when he does not know or can do so, by two supporting witnesses, duly identified.

4. In the cases of connection provided for in the article, a single record will be created.

### **Article 144. [Value of the report or report]**

1. The records referred to in the previous article will be authentic in court, at trial, until proven otherwise, if they are ordered to be collected by a magistrate, in relation to crimes that have been committed before him, in judicial acts or that relate to them .

2. If these records are collected by any other authority or by a public official, they will only be authentic in court, until proven otherwise, if they relate to any crime that corresponds to correctional, transgression or summary proceedings, except in cases where the law requires other steps to be taken to carry out the process.

3. The records to which this article and its paragraph 1 refer are authentic only as regards the facts witnessed by the authority or public servant who raised them or ordered them to be raised.

4. The judge who receives it, even if the report is authentic in court, may order any steps he deems necessary to discover the truth.

## Chapter II Precautionary and police measures

### Article 145. [Communication of news of the crime]

1. Police entities that receive news of a crime, either through their own knowledge or through a report, transmit it to the Public Prosecutor's Office within the shortest possible time, which cannot exceed three days, under penalty of disciplinary responsibility for the agent responsible for the crime. communication.
2. In case of urgency, the transmission referred to in the previous paragraph may be made by any means of communication available for that purpose. Oral communication must, however, be followed by written communication.

### Article 146 [Precautionary measures regarding means of evidence]

1. It is the responsibility of police entities, even before receiving an order from the Public Prosecutor's Office or the competent judge to carry out investigations, to carry out the necessary and urgent precautionary acts to ensure the means of evidence.
2. They are responsible, in particular, under the terms of the previous paragraph:
  - a) Carry out an examination of the traces of the crime, ensuring the maintenance of the state of things and places, being able to close the place to the movement of people and prohibit them from leaving the place until the collection of the traces is completed and the your presence is essential;
  - b) Collect information from people that facilitates the discovery of the perpetrators of the crime and their reconstitution;
  - c) Carry out seizures during searches or searches or in cases of urgency or danger in delay, as well as adopting the necessary precautionary measures for the conservation or maintenance of the seized objects.
3. Even after the intervention of the Public Prosecutor's Office or the judge, it is up to the police entities to ensure new means of evidence of which they are aware, without prejudice to the fact that they must immediately inform that authority of them.

### Article 147 [Identification of suspect and request for information]

1. Police entities may identify any person found in a public place, open to the public or subject to police surveillance, whenever there is a well-founded suspicion of committing crimes, pending extradition or expulsion proceedings, that he has entered or remains illegally in the national territory or that there is an arrest warrant against him.
2. Before proceeding with identification, police entities must prove their capacity, communicate to the suspect the circumstances that justify the identification obligation and indicate the means by which the suspect can identify himself.
3. The suspect may identify himself by presenting one of the following documents:
  - a) Identity card or passport, if you are a São Tomé citizen;
  - b) Residence permit, identity card, passport or document that replaces the passport, if you are a foreign citizen.
4. If it is impossible to present one of the documents referred to in the previous paragraph, the suspect may identify himself by presenting an original document, or a certified copy, containing his full name, his signature and his photograph.
5. If he does not carry any identification document, the suspect may identify himself by one of the following means:
  - a) Communication with a person who presents their identification documents;

- b) Travel, accompanied by police entities, to the place where your identification documents are located;
  - c) Recognition of your identity by a person identified under the terms of paragraph 3 or paragraph 4 that guarantees the veracity of the personal data indicated by the person being identified.
6. If identification is impossible under the terms of paragraphs 3, 4 and 5, police entities may take the suspect to the nearest police station and compel him to remain there for the time strictly necessary for identification, in no case exceeding four hours, carrying out, if necessary, fingerprint, photographic or similar evidence and inviting the person being identified to indicate residence where they can be found and receive communications.
7. The identification acts carried out under the terms of the previous paragraph are always reduced to a record and the identification evidence contained therein is destroyed in the presence of the person being identified, at his/her request, if the suspicion is not confirmed.
8. Police entities may ask the suspect, as well as any person likely to provide useful information, and receive from them, without prejudice to the suspect, his rights, information relating to a crime and, in particular, the discovery and preservation of evidence that could be lost before the intervention of the Public Prosecutor's Office or the judge.
9. When identifying, you will always be given the possibility of contacting a person you trust.

#### **Article 148. [Searches and searches]**

1. In addition to the cases provided for in paragraph 4 of article 241, police entities may proceed, without prior authorization from the judge:
- a) Searching suspects in the event of imminent escape or arrest and searches of the place where they are located, except in the case of a home search, whenever there is a well-founded reason to believe that objects related to the crime are hidden in them, susceptible to serve as evidence and which could otherwise be lost;
  - b) The search of people who have to participate or intend to attend any procedural act, whenever there is reason to believe that they are hiding weapons or other objects with which they could carry out acts of violence.
2. In the previous cases, the carrying out of the investigation is, under penalty of nullity, immediately communicated to the competent judge or Public Prosecutor's Office and assessed by the latter in order to validate it.

## **CHAPTER III Detention and restrictive measures of freedom**

### **Section I Detention**

#### **Article 149 [Concept of detention]**

1. Detention is any deprivation of liberty for a period of time not exceeding 48 hours in which the detainee cannot be placed in a prison established for the execution of a custodial sentence or for the execution of preventive detention.
2. Detention is intended to guarantee the presence of the detainee at the trial in summary proceedings or at the first judicial interrogation to which he must be subjected or to ensure the immediate presence of the detainee at a procedural act that he has unjustifiably missed.
3. The police entity that carried out the arrest or to whom the detainee is handed over is responsible for adopting the precautionary measures strictly necessary to prevent the detainee from escaping.

#### **Article 150 [Flagrant crime]**

1. Any crime being committed is a flagrant crime.

2. Any crime that has just been committed is considered a flagrant crime.
3. A case in which the offender is, shortly after the crime, chased by any person or found with objects or signs that clearly show that he has just committed or participated in it is also considered a flagrant crime.

#### **Article 151 [Arrest in flagrante delicto]**

1. In the case of a flagrant offense for a punishable crime, the judge, the Public Prosecutor's Office, police officer or public servant in relation to the crimes they become aware of in the exercise of their functions and because of them, must proceed with the arrest.
2. If none of the authorities mentioned above can carry out the arrest, any person who witnesses the crime caught in the act may carry out the arrest.
3. The person who has carried out the arrest under the terms of the previous paragraph immediately delivers the detainee to the nearest police authority, which prepares a handover report containing, in addition to the identification of the captor and the circumstances of the capture, the indicted elements. of the commission of the crime.
4. In crimes for which criminal proceedings depend on a complaint, detention cannot exceed twenty-four hours without the holder of the right to complain exercising it.

#### **Article 152 [Detention outside the act of committing a crime]**

1. With the exception of magistrates and lawyers, any other procedural participant may be detained, by order of the judge, as a way of ensuring their immediate appearance in a procedural act that they have unjustifiably missed.
2. During the preparatory investigation, the Public Prosecutor's Office and the Director of the Criminal Investigation Police may order the arrest of the accused outside of the act of committing a crime, when:
  - a) The indicted crime is punishable by a prison sentence of more than three years;
  - b) There is strong evidence that the suspect is preparing to escape the action of justice and it is not possible, given the urgent situation, to wait for the judge's intervention.

#### **Article 153 [Arrest warrants]**

1. Arrest outside of the act of committing a crime can only be carried out by means of a warrant, a duplicate of which will be delivered to the detainee.
2. The arrest warrant must contain:
  - a) Identification of the person to be held and the capacity in which they intervene in the process;
  - b) Identification and number of the case to which the arrest refers;
  - c) Name, category and signature of whoever orders the detention.
3. The warrant is written in triplicate, with the original to be added to the file after the capture has been certified, another for the capturing entity's file and the duplicate to be delivered to the detainee at the time of capture.
4. Detention that does not comply with the provisions of this and previous articles is illegal.

#### **Article 154 [Communications]**

Whenever an arrest occurs, the following communications must be made immediately:

- a) A relative, person of trust or defender of the detainee, preferably indicated by the detainee;
- b) The entity that orders the detention if the detainee is not present immediately;
- c) To the Public Prosecutor's Office in other cases.

### **Article 155 [Release of the detainee]**

1. Any entity that ordered the detention or to which the detainee is present shall immediately release him/her:
  - a) As soon as it becomes clear that the detention was carried out due to a mistake on the person;
  - b) If it was carried out outside the cases and conditions provided for by law;
  - c) As soon as it becomes unnecessary.
2. The release is preceded by an order if the judge or the Public Prosecutor's Office orders it and if it is another entity, through the subsequent preparation of a report to be mandatory attached to the process if it has been initiated.
3. Any police entity that releases a detainee under the terms of the previous paragraphs immediately reports it to the Public Prosecutor's Office under penalty of committing a crime of disobedience and being subject to disciplinary proceedings.

### **Article 156 [Presentation to the Judiciary]**

1. If the detainee has not been released in accordance with the provisions of the previous article, he/she will be compulsorily and immediately presented, for the purposes referred to in article 149, to the competent judge who will be responsible for assessing the legality of the detention carried out.
2. In the event that the detainee does not have to be immediately tried in summary proceedings or does not have to be present at a procedural act which he has missed, the Public Prosecutor's Office will promote the carrying out of a judicial interrogation in which, furthermore, it will decide whether the detainee is necessary application or not of preventive detention or other coercive measure, in compliance with article 215 of this code.
3. For the purposes of this article, shifts will be organized in the Courts and Public Prosecutor's Offices on holidays and weekends so that the detainee is immediately brought before the judge.

### **Article 157 [Habeas corpus for illegal detention]**

1. Any detainee may request the judge of the area in which he is located to order his immediate release, if:
  - a) The deadlines referred to in articles 149 or any other deadline for delivery or presentation to the judiciary have been exceeded;
  - b) Detention remains outside the places and conditions legally provided for;
  - c) The detention was ordered or carried out by an incompetent entity;
  - d) The detention is not admissible on the grounds invoked.
2. The request may be signed by the detainee or by any person exercising their political or civil rights who will present it to the entity holding the detainee, which will immediately forward the request to the judge with the information it deems necessary.

### **Article 158 [Processing the incident]**

1. Once the request is received, if there is no clear case of rejection, the judge orders, under penalty of qualified disobedience, the immediate presentation of the detainee and all the files relating to the case in possession of the capturing entity.
2. After hearing the Public Prosecutor's Office, the detainee's defender and the latter, the judge decides the incident within forty-eight hours,
3. Failure to comply with the release order issued by the judge or failure to immediately send the habeas corpus request implies criminal liability, for the crime of qualified disobedience of anyone who omits or obstructs compliance.
4. If the Court finds the habeas corpus petition for illegal detention manifestly unfounded, it will sentence the petitioner in the amount of 250,000 to 2,500,000 doublings.

## Section II Coercive measures

### Article 159 [Principle of legality]

1. Only the accused may be subject to coercive measures. Property guarantee measures can be applied to both those and the civil liability.
2. The applicable coercion and property guarantee measures are exclusively those provided for in this code or in the law and must only be those necessary and appropriate to the precautionary requirements that the case requires and proportional to the seriousness of the crime.
3. The obligation to identify any citizen before the competent authority to demand it is not considered a coercive measure.

### Article 160. [Choice of measure]

1. When choosing the measure to apply to the specific case, in general, the following must be taken into account:
  - a) The adequacy of the measure to the procedural needs that are intended to be addressed;
  - b) The proportionality of the measure to the seriousness of the crime and the sanctions that are expected to be applied in the specific case;
  - c) Preference for the measure that, being adequate to precautionary requirements, least restricts the normal exercise of fundamental human rights.
2. In a special way, the judge must give preference to the application of non-custodial measures when dealing with an agent under twenty-one years of age and with no criminal record.  
criminals.

### Article 161 [General requirements]

1. Except for the term of identity and residence, the application of any other coercive measure depends on the verification of at least one of the following requirements:
  - a) Escape or well-founded danger of escape;
  - b) Danger of disruption to the investigation or the holding of the trial hearing and, in particular, danger to the acquisition, conservation or veracity of evidence;
  - c) Current and well-founded danger of continuation of criminal activity or disruption of public order and tranquility, due to the nature, circumstances of the crime and the personality of the offender.
2. In the decision to apply any measure, with the exception of the term of identity and residence, the reasons for its choice are expressly mentioned, taking into account the provisions of this and the previous article.

### Article 162 [Accumulation of measures]

1. Coercion and property guarantee measures may be applied simultaneously at the same time.  
bad person.
2. The identity and residence term may be combined with other measures, while preventive detention excludes the application of any other measure other than the identity term.
3. The deposit and the presentation obligation are cumulative.

### Article 163 [Competence to apply the measure]

1. Any judicial entity may apply the identity and residence term.
2. The remaining coercive measures will be applied by the judge, at the request of the Public Prosecutor's Office in preparatory instructions and even ex officio in the other procedural phases.
3. When applying the measures, whenever possible and convenient, the accused should be heard, and the hearing may take place during judicial interrogation.



### **Article 168. [Breach of deposit]**

1. The judge, by order, declares the bail broken whenever the defendant fails to comply with the procedural obligations arising from the coercive measure applied or unjustifiably misses a procedural act.
2. The order for breach of security deposit may be challenged by means of an appeal, under the terms set out in article 180.
3. Once the security deposit is broken, its value reverts to the State and is allocated as revenue to the Prison Assistance Fund.

### **Article 169 [Collection of deposit]**

1. A final, final and unappealable decision is made, with the arrest of the defendant, any cause for the extinction of criminal liability being verified, or, if bail is unnecessary for any other reason, the Court of its own motion declares it void.
2. This declaration implies that the cancellation of the mortgage registration or the refund of the deposit or seized objects is ordered or that the guarantor's responsibility is declared extinguished.
3. If, after ninety days have elapsed, after personal notification made for this purpose, the seized objects are not reclaimed or the refund of the deposit already cancelled, their forfeiture will be decreed in favor of the State with the same destination referred to in paragraph 3 of the article 168th.

### **Article 170. [Prohibition on leaving the country]**

1. If there is strong evidence of the commission of an intentional crime punishable by a prison sentence of more than three years, the judge may prohibit the agent from leaving the country and order the seizure of the passport or passports he or she holds.
2. Whenever the judge determines the coercive measure provided for in the previous paragraph, he will immediately communicate such measure to the border authorities.

### **Article 171 [Preventive detention]**

1. In addition to the occurrence of one of the requirements set out in article 161, the application of preventive detention, as a coercive measure of an exceptional nature, depends on the cumulative verification of the following assumptions:
  - a) Strong evidence of the commission of an intentional crime punishable by a prison sentence of more than three years;
  - b) Inadequacy or insufficiency of any other measure provided for by law.
2. Preventive detention may also be applied to anyone who illegally enters or remains in national territory or who is subject to extradition or expulsion proceedings, under terms to be regulated by specific law.
3. Before or after the application of preventive detention, the defendant, assisted by a defense attorney, must be present before the judge in order to contradict the assumptions of the said measure.
4. Whoever suffers from a psychological anomaly and if the requirements for applying preventive detention have been met and as long as this anomaly persists, the judge will be subjected to preventive hospitalization in an appropriate hospital for as long as such provisional measure proves necessary.

### **Article 172 [Duration of preventive detention]**

1. Preventive detention cannot exceed from its beginning:
  - a) Three months until the completion of the preparatory instruction;
  - b) Five months until the conclusion of the contradictory instruction;
  - c) Seven months until the start of the trial hearing;
  - d) Nine months without a final, final decision.
2. The aforementioned deadlines are increased by one third (1/3) when the process proves to be exceptionally complex or investigative steps must be carried out in

foreign territory, and the judge must issue a duly substantiated order declaring the special complexity, which may be appealed, with devolutive effect, immediate and separate rise, processed under general terms.

3. The previously mentioned deadlines cannot be extended and, before they are exceeded, if compliance is not foreseeable, the defendant must be released, except if he must be detained under another process, in which case his dismissal must be ordered.
4. For the purposes of counting the previously mentioned periods, preventive detention is considered to be the period of detention suffered, as well as hospitalization in lieu of that measure.

#### **Article 173 [Review of the conditions for applying preventive detention]**

After hearing the Public Prosecutor's Office and the defendant, the judge, of his own motion, re-examines the factual and legal assumptions of preventive detention, or the obligation to remain in the home, within a maximum period of ninety (90) days from the date of its application or the last re-examination.

#### **Article 174 [Revocation of preventive detention]**

Upon request or of its own motion, the judge revokes preventive detention and determines the defendant's freedom, when he finds that it was applied outside the cases and conditions provided for by law or when the circumstances that determined it no longer exist.

#### **Article 175 [Suspension of preventive detention]**

1. For reasons of serious illness, puerperium or pregnancy, preventive detention may be suspended for the period that the judge deems necessary depending on the possible duration of those circumstances.
2. During suspension, preventive detention may be replaced by another coercive measure under general terms that prove appropriate and compatible with your condition.

#### **Article 176 [Replacement of preventive detention]**

1. In the situation provided for in number 1 of the previous article and also in the case where the defendant suffers from a serious psychological anomaly that does not manifest itself continuously, the judge may, exceptionally, in lieu of preventive detention, order hospitalization, with or without police surveillance.
2. When there is a reduction in the precautionary requirements that determined the application of preventive detention, the judge ex officio and or upon request replaces it with another less serious measure after hearing the Public Prosecutor's Office and the defendant.

#### **Article 177 [Extinction of preventive detention]**

1. Preventive detention ends immediately:
  - a) With the archiving of the case as a result of the failure to file an indictment or indictment or for any other reason that justifies the termination of the criminal proceedings;
  - b) With an acquittal sentence, regardless of the final judgment;
  - c) With final judgment, if the penalty imposed is not greater than the preventive detention already suffered.
2. The termination of preventive detention implies the immediate release of the defendant.

#### **Article 178 [Discount for preventive detention and detention]**

1. The arrest and preventive detention suffered in the process in which the person is convicted are deducted from the prison sentence imposed.
2. If only a fine is imposed upon conviction, pre-trial detention is deducted at the rate of one day of fine for one day of imprisonment.
3. If the conviction complies with the penalty of a fine, a discount will be made that appears fair for the preventive detention suffered.

#### **Article 179 [Replacement of other coercive measures]**

1. The provisions of paragraph 2 of article 175 and article 176 are correspondingly applicable to other coercive measures.
2. In case of violation of the obligations imposed by the application of a coercive measure, another one or others may be imposed, or the initial one may be replaced, depending on the circumstances.

#### **Article 180. [Appeal against applied measures]**

1. Except for the terms of identity and residence, other coercive measures are subject to appeal.
2. The appeal must be filed within 15 days, has a return effect, is raised immediately, separately and is processed in the same way as grievances in civil matters.

#### **Article 181 [Habeas corpus for illegal arrest]**

1. Any person who is illegally imprisoned may request the Supreme Court of Justice, either by themselves or by any citizen enjoying their political and civil rights, to be granted the provision of "*habeas corpus*".
2. The illegality of preventive detention must be based on the fact that:
  - a) Have been carried out or ordered by an incompetent entity;
  - b) Be motivated by a fact for which the law does not allow its application;
  - c) Maximum duration periods have been exceeded;
  - d) The review referred to in article 173 has not been carried out within the legally stipulated period.

#### **Article 182 [Processing the incident]**

1. The application is drawn up in duplicate addressed to the President of the Supreme Court of Justice and presented to the authority in charge of the prisoner, who sends it to the Supreme Court of Justice within twenty-four hours with the relative information the circumstances that led to the arrest and whether it continues.
2. Upon receipt of the request, the President of the Supreme Court of Justice orders notification of the Public Prosecutor's Office and the defender constituted or appointed for that purpose, so that they can make a decision within forty-eight hours.
3. Within seven days of receipt of the application, once the necessary steps have been taken, a decision will be made on the application presented.
4. The decision is the responsibility of the Full Court of the Supreme Court of Justice.
5. If the Supreme Court of Justice finds the *habeas corpus* petition manifestly unfounded, it will sentence the petitioner in the amount of 250,000 to 2,500,000 doublings.

#### **Article 183 [Compliance with the decision]**

If the Supreme Court of Justice decrees the illegality of the arrest, it immediately communicates to the entity the order of whoever is detained, who must order his immediate release, under penalty of criminal liability.

## **Section III Asset guarantee measures**

#### **Article 184 [Economic security]**

1. If there is a well-founded fear that the guarantees for the payment of a pecuniary penalty, court tax, or any other debt owed to the State and related to the criminal process are missing or substantially reduced, it will be ordered, ex officio or request, the provision of economic security by the person responsible.
2. The economic security remains distinct and autonomous from the security referred to in article 166, is processed by attachment and remains until the final acquittal decision or until the obligations are extinguished.

3. The civil liability only provides economic security depending on the probable amount to be paid as compensation.

#### **Article 185 [Preventive arrest]**

1. If the economic security imposed under the terms of the previous article is not provided, seizure may be ordered in its place as regulated by civil procedural law, which is processed for attachment.
2. The seizure referred to in this rule may be ordered even in relation to a trader.
3. Once the economic security initially imposed is provided, the seizure must be revoked.

#### **Article 186 [Competence for application]**

1. The application of property guarantee measures is the responsibility of the judge in the respective criminal case.
2. The Public Prosecutor's Office, the assistant or the person injured by the crime are entitled to request the provision of an asset guarantee measure.

### **Section IV Compensation for illegal or unjustified deprivation of liberty**

#### **Article 187. [Modalities]**

1. Anyone who has suffered manifestly illegal detention or preventive detention may request compensation from the competent Court for damages suffered as a result of the deprivation of liberty.
2. The provisions of the previous paragraph apply to anyone who has suffered preventive detention which, although not illegal, turns out to be unjustified due to a gross error in the assessment of the factual or legal assumptions on which it depended, except if the prisoner has participated, anyway, for this error.

#### **Article 188. [Term and legitimacy]**

1. The claim for compensation must be proposed within a period of one year after the release of the person concerned or the final decision on the case.
2. The right to compensation based on the facts described in the previous article is transmitted upon the death of the person unjustifiably deprived of liberty.

#### **Article 189 [Concept of employee]**

For the purposes of this Code, the concept of employee covers both civil servants and administrative agents, as well as those holding judicial or police positions.

## **CHAPTER IV Relations with foreign authorities and international judicial entities**

#### **Article 190. [Prevalence of international agreements and conventions]**

Requests, extradition, delegation of criminal proceedings, the effects of foreign criminal sentences and other relations with foreign authorities relating to the administration of criminal justice are regulated by international treaties and conventions and, in their absence or insufficiency, by the provided for in special law and also by the provisions of this chapter.

#### **Article 191. [Requests to foreigners]**

1. Without prejudice to the provisions of the previous article, requests to foreign authorities are delivered to the Public Prosecutor's Office for dispatch.

2. Requests to foreign authorities are only issued when the competent judicial authority understands that they are necessary to prove some essential fact for the accusation or defense.

### **Article 192 [Reception and fulfillment of requests from foreign authorities]**

1. Requests are received by any means, and the Public Prosecutor's Office is responsible for ensuring compliance.

2. The decision to comply with requests addressed to the Sao Tome judicial authorities is the responsibility of the judge in the adversarial investigation and trial phases and the Public Prosecutor's Office in the preparatory investigation phase, except if the requested act falls within the jurisdiction of the judge.

3. Upon receipt of a request that should not be complied with by the Public Prosecutor's Office, it is given permission to oppose compliance with whatever it deems appropriate.

### **Article 193. [Refusal to comply with requests]**

1. Compliance with requests is refused in the following cases:

a) When the requested judicial authority does not have the competence to carry out the act;

b) When the request concerns an act that the law prohibits or is contrary to public order in São Tomé;

c) When the execution of the request is an attack on the sovereignty or security of the State;

d) When the act involves execution of a decision of a foreign court subject to review and confirmation and the decision is not revised and confirmed.

2. In the case referred to in paragraph a) of the previous paragraph, the requested judicial authority sends the request to the competent judicial authority, if this is São Tomé.

### **Article 194. [Cooperation with international judicial entities]**

The provisions of article 190 apply, with due adaptations, to cooperation with international judicial entities established within the scope of treaties or conventions that bind the State of São Tomé.

## **CHAPTER V Da prova**

### **Section I General provisions**

#### **Article 195 [Means of evidence]**

1. The subject of proof is all facts that are legally relevant to the existence or non-existence of the crime, the punishability or non-punishability of the accused and the determination of the applicable penalty or security measure.

2. If a civil claim is made, the facts relevant to the determination of civil liability are also subject to proof.

#### **Article 196 [Admissible evidence]**

1. The corpus delicti can be established by any means of proof admitted by law.

2. The records referred to in article 144 and in the exact terms referred to therein will serve as the corpus delicti.

3. In crimes of falsehood, when it has been judged proven in any non-criminal proceeding, preceded by an examination, the corpus delicti will be constituted by the certificate of the examination and the sentence.

#### **Article 197 [Confession]**

1. The defendant's confession unaccompanied by any other evidence is not valid as a crime.

2. Even if the defendant has confessed to the crime, the magistrate must take all steps to establish the truth, and must investigate, with all the elements at his disposal, whether the confession is true or not.

#### **Article 198 [Legality of the test]**

Evidence that is not prohibited by law is admissible.

#### **Article 199. [Prohibited methods of proof]**

1. Evidence obtained through torture, coercion or, in general, harm to the physical or moral integrity of people is null and cannot be used.

2. Evidence obtained, even with their consent, through:

- a) Disruption of freedom of will or decision through ill-treatment, bodily harm, administration of means of any nature, hypnosis or use of cruel or deceptive means;
  - b) Disturbance, by any means, of memory or evaluation capacity;
  - c) Use of force, outside the cases and limits permitted by law;
  - d) Threat with a legally unacceptable measure and, as well, with denial or conditioning of obtaining a legally provided benefit;
  - e) Promise of legally unacceptable advantage.
2. Except in the cases provided for by law, evidence obtained through intrusion into private life, home, correspondence or telecommunications without the consent of the respective holder is also null and void and cannot be considered.
3. If the use of the methods of obtaining evidence provided for in this article constitutes a crime, they may be used for the exclusive purpose of prosecuting the agents thereof.

#### **Article 200 [Free assessment of evidence]**

Unless the law provides otherwise, the evidence is assessed according to the rules of experience and free conviction of the competent entity.

## **Section II Testimonial evidence**

#### **Article 201 [Object and limits of the statement]**

1. The witness is questioned about facts of which he or she has direct knowledge and which constitute the subject of evidence.
2. Except when the law provides otherwise, before the court proceeds to determine the applicable sentence or security measure, the inquiry into facts relating to the personality and character of the defendant, as well as his personal conditions and their previous conduct is only permitted to the extent strictly indispensable for proving the constituent elements of the crime, namely the guilt of the agent, or for the application of a measure of coercion or property guarantee.

#### **Article 202 [Indirect testimony]**

1. If the testimony results from what specific people were heard saying, the judge may call them to testify. If this is not done, the statement produced cannot, in that part, serve as evidence, unless the interview of the indicated persons is not possible due to death, supervening psychic anomaly or impossibility of being found.
2. The provisions of the previous paragraph apply to the case in which the testimony results from the reading of a document authored by a person other than the witness.
3. Under no circumstances may the testimony of anyone who refuses or is not in a position to indicate the person or source through which they learned of the facts be used as evidence.

### **Article 203 [Public voices and personal convictions]**

1. The reproduction of public voices or rumors is not admissible as testimony.
2. The expression of mere personal convictions about facts or their interpretation is only admissible in the following cases and to the strict extent indicated therein:
  - a) When it is impossible to separate it from the testimony on specific facts;
  - b) When it takes place as a result of any science, technique or art;
  - c) When it occurs at the sanction determination stage.

### **Article 204 [Capacity and duty to testify]**

1. Any person who is not prohibited due to a mental anomaly has the capacity to be a witness and can only refuse to testify in cases provided for by law.
2. The respective magistrate checks the physical or mental fitness of any person to give testimony, when this is necessary to assess their credibility and can be done without delaying the normal course of the process.
3. In the case of a testimony from a minor under the age of sixteen in a sexual crime, an examination may be carried out on personality.
4. The inquiries, referred to in the previous paragraphs, ordered prior to the deposition do not prevent it from taking place.

### **Article 205 [General duties of the witness]**

1. Unless the law provides otherwise, the witness is responsible for:
  - a) Present yourself, at the appropriate time and place, to the authority by whom you have been legitimately summoned or notified, remaining at their disposal until released;
  - b) Take an oath, when heard by a magistrate;
  - c) Obey the instructions that are legitimately given to you regarding how to give a statement;
  - d) Answer truthfully the questions asked.
2. A witness is not obliged to answer questions when he or she claims that the answers result in criminal liability.

### **Article 206 [Refusal of relatives and the like]**

1. The following may refuse to testify as witnesses:
  - a) Descendants, ascendants, siblings, relatives up to the second degree, adopters, adoptees and the defendant's spouse or equivalent;
  - b) Whoever was the spouse or equivalent of the defendant, in relation to facts that occurred during the marriage or cohabitation.
2. The entity competent to receive the statement warns, under penalty of nullity, the people referred to in the previous paragraph of their right to refuse to give the statement.

### **Article 207 [Impediments]**

1. The following are prevented from testifying as witnesses:
  - a) The defendant and co-accused in the same case or in related cases, as long as they maintain that status;
  - b) People who have become assistants, from the moment of constitution;
  - c) The civil parties.
2. In the event of separation of cases, defendants accused of the same crime or a related crime may testify as witnesses, if they expressly consent to this.

### **Article 208 [Declarants]**

Persons prevented from testifying as witnesses may be heard by the court, as declarants, under the terms of article 218.

### **Article 209 [Professional secret]**

1. Ministers of religion or religious denomination, lawyers, doctors, journalists, members of credit institutions and other people who the law allows or requires to keep professional secrecy may excuse themselves from testifying about the facts covered for that secret.

2. If there are well-founded doubts about the legitimacy of the excuse, the magistrate before whom the incident arose will carry out the necessary investigations. If, after these, he concludes that the excuse is illegitimate, he orders, or requests the court to order, the provision of the statement.

3. The Supreme Court of Justice or, if the incident has arisen before it, its full court, may decide to provide testimony in breach of professional secrecy whenever this proves to be justified in view of the applicable norms and principles of criminal law, namely, in view of the principle of the prevalence of preponderant interests. The intervention is initiated by the judge, ex officio or upon request.

4. The provisions of the previous paragraph do not apply to religious secrets.

5. In the cases provided for in numbers 2 and 3, the court's decision is taken after hearing the body representing the profession related to the professional secrecy in question, under the terms and with the effects set out in the legislation to which that body is applicable.

### **Article 210 [Employee secrecy]**

1. Officials may not be questioned about facts that constitute a secret and that they became aware of in the course of carrying out their duties.

2. The provisions of numbers 2 and 3 of the previous article are correspondingly applicable.

### **Article 211 [State Secret]**

1. Witnesses cannot be questioned about facts that constitute state secrets.

2. The State secret referred to in this article covers, in particular, facts whose disclosure, even if it does not constitute a crime, could cause damage to the security, internal or external, of the State of São Tomé or to the defense of the constitutional order.

3. If the witness claims state secrecy, this must be confirmed, within thirty days, through the Minister of Justice. After this period has elapsed without confirmation having been obtained, the testimony must be provided.

### **Article 212 [Rules on inquiry]**

1. The statement is a personal act that cannot, under any circumstances, be made through an attorney.

2. Witnesses should not be asked suggestive or impertinent questions, nor any other questions that could harm the spontaneity and sincerity of their responses.

3. The inquiry must focus, firstly, on the elements necessary to identify the witness, on their kinship and interest relationships with the accused, the offended party, the assistant, the civil parties and with other witnesses, as well as on any circumstances relevant to assessing the credibility of the testimony. Next, if you are required to take an oath, you must take it, after which you testify under the terms and within the legal limits.

4. When convenient, witnesses may be shown any parts of the case, documents relating to it, instruments with which the crime was committed or any other seized objects.

5. If the witness presents any object or document that can serve as evidence, mention is made of its presentation and it is added to the process or stored appropriately.

### **Article 213 [Immunities and prerogatives]**

1. All immunities and prerogatives established by law regarding the duty to testify and the manner and place of giving statements apply in criminal proceedings.
2. The possibility of carrying out the legally admissible contradiction in the case.

## **Section II Statements by the accused, the assistant and the civil parties**

### **Article 214 [Statements of the accused: general rules]**

1. Whenever the accused makes a statement, and even if he is detained or imprisoned, he must be free in his person, unless precautions are necessary to prevent the danger of escape or acts of violence.
2. The provisions of articles 201 and 212 are correspondingly applicable to the defendant's statements, except when the applicable law provides differently.
3. The defendant does not take an oath under any circumstances.

### **Article 215 [First interrogation by the judge of detained defendant]**

1. The detained defendant, who should not immediately be tried in summary proceedings, is interrogated by the competent judge, within a maximum period of forty-eight hours after arrest, as soon as he is present with an indication of the reasons for the detention and the evidence that substantiate it.
2. The interrogation is carried out exclusively by the judge, with the presence of the Public Prosecutor's Office and the appointed defender, or, for the appointed act, with the court official present. The presence of any other person is not permitted, unless, for security reasons, the detainee must be kept in plain sight.
3. The defendant is asked for his name, affiliation, place and district of birth, date of birth, marital status, profession, residence, official document number that allows identification, if he has ever been arrested, when and why and whether or not he was convicted and for what crimes. You must be warned that failing to answer these questions or making them false may result in you incurring criminal liability.
4. The judge then informs the defendant in detail of the reasons for the arrest and that, regarding the facts alleged against him, he is not obliged to make any statements.
5. By making statements, the defendant may confess or deny the facts or his participation in them and indicate the causes that may exclude illegality or guilt, as well as any circumstances that may be relevant to the determination of his responsibility or the extent of the sanction.
6. During the interrogation, the Public Prosecutor's Office and the defender, without prejudice to the right to argue nullities, refrain from any interference. Once the interrogation is over, they can ask the judge to ask the defendant any questions they deem appropriate to discover the truth. The judge's decision on the application cannot be appealed.
7. At the end of the interrogation, the judge gives the floor to the Public Prosecutor's Office and the defender to comment on the arrest, the facts, the evidence in the case and the coercive measures to be applied.
8. At the request of the Public Prosecutor's Office or the defendant and for the purpose of presenting other relevant elements of a probative nature for the decision to be taken, the final decision may be made later, with the interrogation being interrupted for a maximum period of 48 hours. In this case, the judge immediately decides on validating the constitution of the accused and the detention, and may provisionally decree the appropriate coercive measure.
9. After the interrogation has resumed on the scheduled date, the judge decides, considering its relevance, on the admission or rejection of the elements presented, after which he issues a reasoned order on the coercive measures to be applied.

10. The defender has the indispensable right to communicate with the accused prior to the beginning of the interrogation, for a period of no less than one hour. During the interrogation, the defender may also request to meet with the accused, in private, if he considers it convenient to ensure the defense.

11. The first interrogation of a detained defendant is documented in minutes, which must include all events that occurred during it.

#### **Article 216 [First interrogation by the Public Prosecutor's Office of a detained defendant]**

1. The detained defendant who is not questioned by the judge immediately following his arrest is presented to the Public Prosecutor's Office in the area where the arrest took place, which may hear him summarily.
2. The interrogation complies, in the applicable part, with the provisions of the previous article.
3. After the summary interrogation, the Public Prosecutor's Office, if the accused is not released, will arrange for him to be brought before the judge, in accordance with the previous article and 156.
4. In cases of terrorism, violent or highly organized crime, the Public Ministry may determine that the detainee does not communicate with anyone, except the defender, before the first judicial interrogation.

#### **Article 217 [Interrogation of the accused by the police and other interrogations]**

1. Subsequent interrogations of arrested defendants and interrogations of released defendants are carried out in the preparatory investigation by the Public Prosecutor's Office and in the contradictory investigation and in trial by the respective judge.
2. During the investigation, the interrogations referred to in the previous paragraph may be carried out by the police authorities to whom the Public Prosecutor's Office has delegated their carrying out.
3. The police authorities may summarily hear the detainee but may not interrogate him before he is brought before the judge in accordance with article 215.

#### **Article 218. [Declarations by the assistant and civil parties]**

1. Statements may be made to the assistant and the civil parties at their request, or that of the defendant, or whenever the authority presiding over the respective pre-trial phase deems it convenient.
2. The assistant and civil parties are subject to the duty of truth and criminal liability for its violation.
3. The provision of statements by the assistant and the civil parties is subject to the provision of testimonial evidence except where it is manifestly inapplicable and where the law provides differently.

## **Section IV Test by comparison**

#### **Article 219. [Assumptions and procedure]**

1. A confrontation is admissible between co-accused, between the accused and the assistant, between witnesses or between witnesses, the accused and the assistant, whenever there is a contradiction between their statements, and the diligence appears useful in discovering the true.
2. The provisions of the previous paragraph are correspondingly applicable to civil parties.
3. The confrontation takes place ex officio or upon request.
4. The entity that presides over the investigation, after reproducing the statements, asks the people concerned to confirm or modify them and, when necessary, to contest those of other people, then asking them the questions that it deems appropriate to the clarification of the truth.

## Section V Proof by recognition

### Article 220 [Person recognition]

1. When there is a need to recognize any person, the person who needs to be identified is asked to describe them, indicating all the details they remember, which must be recorded in the record. You are then asked if you have seen it before and under what conditions. Finally, she is asked about other circumstances that could influence the credibility of the identification.
2. If the identification is not complete, the person responsible for the identification should step aside and at least two people who present the greatest possible similarities, including clothing, with the person to be identified will be called. The latter is placed next to them and, if possible, should be in the same conditions in which it could have been seen by the person carrying out the recognition. The person is then called and asked if they recognize any of those present and, if so, which one.
3. If there is reason to believe that the person called to make the identification may be intimidated or disturbed by the recognition and this does not take place at a hearing, the same must be carried out, if possible, without that person being seen by the person being identified. .
4. Recognition carried out via photography, film or recording is admissible, subject to legal formalities.
5. Recognition that does not comply with the provisions of this article has no value as a means of trial.

### Article 221 [Object recognition]

1. When there is a need to proceed with the recognition of any object related to the crime, proceed in accordance with the provisions of paragraph 1 of the previous article, in everything that is correspondingly applicable.
2. If the recognition leaves doubt, the object to be recognized is placed together with at least two other similar ones and the person is asked if they recognize any of them, and, if so, which one.
3. The provisions of paragraph 5 of the previous article are correspondingly applicable.

### Article 222 [Plurality of recognition]

1. When there is a need to recognize the same person or the same object by more than one person, each person does so separately, preventing communication between them.
2. When there is a need for the same person to recognize several people or several objects, recognition is carried out separately for each person or each object.
3. The provisions of articles 220 and 221 are correspondingly applicable.

## Section VI Reconstitution of the fact

### Article 223 [Assumptions and procedure]

1. When there is a need to determine whether an event could have occurred in a certain way, its reconstruction is admissible. This consists of reproducing, as faithfully as possible, the conditions under which the event is stated or supposed to have occurred, and the repetition of the way in which it occurred.
2. The order ordering the reconstruction of the fact must contain a succinct indication of its purpose, the day, time and place in which the measures will take place and the manner in which they will be carried out, possibly using audiovisual means. In the same order, an expert may be appointed to carry out certain operations.

3. Publicity of the diligence must, as far as possible, be avoided.

## Section VII Expert evidence

### Article 224. [When it takes place]

Expert evidence takes place when the perception or assessment of facts requires special technical, scientific or artistic knowledge.

### Article 225. [Who carries it out]

1. The expertise is carried out in an appropriate establishment, laboratory or official service or, when this is not possible or convenient, by an expert appointed from among people on lists of experts existing in each court, or, in the absence thereof or impossibility of a response in a timely manner, from a person of honor and recognized competence in the matter in question.
2. When the expertise proves to be particularly complex or requires knowledge of different subjects, it may be granted to several experts working on a collegiate or interdisciplinary basis.

### Article 226 [Performance of the role of expert]

1. The expert is obliged to perform the function for which he has been competently appointed, without prejudice to the provisions of article 95 and the following number.
2. The appointed expert may request an excuse based on the lack of indispensable conditions for carrying out the examination and may be refused, for the same reasons, by the Public Prosecutor's Office, the accused, the assistant or the civil parties, without prejudice, however, to the carrying out of the investigation of expertise if it is urgent or there is danger in delay.
3. The expert may be replaced by the magistrate who appointed him when he fails to present the report within the set deadline or when he negligently performs the task assigned to him. The decision to replace the expert cannot be appealed.
4. Once the substitution has been made, the person being replaced is notified to appear before the competent magistrate and explain the reasons why he did not fulfill the task. If the judge considers there to be a gross violation of the duties incumbent upon the person being replaced, the judge, either of his own motion or upon request, orders him to pay a sum between 500,000 and 5,000,000 doublings.

### Article 227 [Order ordering the expertise]

1. The expertise is ordered ex officio or upon request, by order of the magistrate in charge of the case, containing the name of the experts and a summary indication of the object of the expertise, as well as, prior to hearing the experts, if possible, indicating the day, time and place where it will take place.
2. The order is notified to the Public Prosecutor's Office, when the latter is not its author, to the accused, the assistant and the civil parties, at least three days before the date indicated for the examination to be carried out.
3. The following cases are subject to the provisions of the previous paragraph:
  - a) In which the examination takes place during the preparatory investigation and the Public Prosecutor's Office has reasons to believe that knowledge of it or its results, by the accused, the assistant or the civil parties, could harm the purposes of the investigation;
  - b) Urgency or danger of delay.

### Article 228 [Technical consultants]

1. Once the expert examination has been ordered, the Public Prosecutor's Office, the defendant, the assistant and the civil parties may designate a technical consultant they trust to attend the examination, if this is still possible.

2. The technical consultant may propose the carrying out of certain measures and formulate observations and objections, which will be included in the report.
3. If the technical consultant is appointed after carrying out the examination, he may, except in the case provided for in paragraph a) of paragraph 3 of the previous article, take note of the report.
4. The appointment of a technical consultant and the performance of his/her role cannot delay the carrying out of the expertise and the normal progress of the process.

### **Article 229 [Procedure]**

1. The experts provide a commitment, and the competent magistrate may, ex officio or at the request of the experts or technical consultants, formulate questions when their existence proves convenient.
2. The magistrate shall, whenever possible and convenient, attend the examination, and may also allow the presence of the accused and the assistant, unless the examination is likely to offend modesty.
3. If the experts require any steps or clarifications, they request that these steps be taken or that these clarifications be provided to them, for which they may be shown any acts or documents from the process.
4. The elements that are communicated to the expert for the full exercise of their function cannot be used to prove the fact or who their agent was.

### **Article 230 [Expert report]**

1. Once the examination is complete, the experts prepare a report, in which they mention and describe their responses and conclusions, which are duly substantiated and which cannot be contradicted. Experts may, however, be asked for clarifications by the magistrate in charge of the case, by the defendant, by the civil parties' assistant and by technical consultants.
2. The report, prepared immediately after the examination, can be dictated to the record.
3. If the report cannot be prepared immediately after the examination, a deadline, not exceeding thirty days, is set for its presentation. In cases of special complexity, the deadline may be extended, at the reasoned request of the experts, for another thirty days.
4. If knowledge of the results of the examination is not essential for the judgment on the accusation or the ruling, the competent magistrate may authorize the report to be presented until the opening of the hearing.
5. If the expertise is carried out by more than one expert and there is disagreement between them, each one presents their report, the same applies to interdisciplinary expertise. In the case of collegiate expertise, there may be a winning opinion and a losing opinion.

### **Article 231 [Clarifications and new expertise]**

At any point in the process, the competent magistrate may determine, ex officio or upon request, when this proves to be of interest for discovering the truth, that:

- a) Experts are summoned to provide additional clarifications, and the day, time and place in which the investigation will take place must be communicated to them; or
- b) A new expertise is carried out or the previous expertise is renewed by another expert(s).

### **Article 232 [Medico-legal and psychiatric expertise]**

1. Expertise relating to medico-legal issues is granted to any doctors who are specialists or who carry out, on an ongoing basis, medico-legal activities or have special qualifications for them.
2. The provisions of the previous paragraph are correspondingly applicable to expertise relating to psychiatric issues, in which specialists in psychology and criminology may also participate.
3. Psychiatric expertise may be carried out at the request of the legal representative of the accused, the spouse not legally separated from persons and property or descendants, or, in the absence

of their ancestors, adoptive parents, adoptees or the person who lives with the defendant in conditions similar to those of their spouses.

### **Article 233 [Personality expertise]**

1. For the purpose of evaluating the personality and dangerousness of the defendant, an expert examination may be carried out on their specific characteristics independent of pathological causes, as well as on their degree of socialization. The expertise may be relevant, in particular, to the decision on the revocation of preventive detention, the guilt of the agent and the determination of the sanction.
2. Experts may request information about the defendant's criminal record, if they need it.

### **Article 234 [Destruction of objects]**

If experts, in order to carry out the examination, need to destroy, alter or seriously compromise the integrity of any object, they request authorization to do so from the magistrate in charge of the case and who ordered the examination. Once authorization is granted, the exact description of the object and, whenever possible, its photograph remain in the records; In the case of a document, its photocopy remains, duly authenticated.

### **Article 235 [Remuneration of experts]**

1. Whenever the expertise is carried out in an establishment or by an unofficial expert, the entity that ordered it sets the expert's remuneration, based on the tables approved by the Ministry of Justice or, failing that, taking into account the fees currently paid for services of the kind and importance of those provided.
2. In case of replacement of the expert, in accordance with the provisions of no. 3 of article. 226, the competent entity may determine that there is no remuneration for the substitute.
3. Decisions on remuneration may, depending on the case, be appealed or hierarchically complained.  
that.

### **Article 236 [Value of expert evidence]**

1. The technical, scientific or artistic judgment inherent in the expert evidence is presumed to be exempt from the free assessment of the judge.
2. Whenever the judge's conviction differs from the judgment contained in the experts' opinion, he or she must justify the divergence.

## **Section VIII Documentary evidence**

### **Article 237 [Admissibility]**

1. Documentary evidence is admissible, meaning a declaration, sign or notation embodied in writing or any other technical means, in accordance with criminal law.
2. The gathering of documentary evidence is done ex officio or upon request, and it cannot be attached document containing an anonymous statement, unless it is itself the object or element of the crime.

### **Article 238. [When documents can be attached]**

1. The document must be attached during the preparatory or adversarial investigation and, if this is not possible, it must be submitted until the end of the hearing.
2. In any case, the possibility of adversarial proceedings is ensured, for which the court may grant a period not exceeding eight days.
3. The provisions of the previous paragraphs are correspondingly applicable to opinions from lawyers, jurisconsults or technicians, which can always be included until the end of the hearing.

#### **Article 239. [Documents written in a foreign language or poorly legible]**

If the documents are written in a foreign language, they will be accompanied by an official translation whenever necessary and, if the handwriting is poorly legible, a transcription will be attached to clarify them, and if it is encrypted, it will be subjected to an expert examination. intended to obtain its decryption.

#### **Article 240. [Evidentiary value of authentic and authenticated documents]**

1. Material facts contained in an authentic or authenticated document are considered proven as long as the authenticity of the document or the veracity of its contents are not fundamentally called into question.
2. All other documents are freely assessed by the court.

#### **Article 241 [False document]**

1. The court may, ex officio or upon request, declare a document in the case file as false under the terms and in accordance with the provisions of articles 104 to 109 of this code.
2. The provision relating to the falsity of a document may be appealed independently, under the same terms in which the remaining part of the sentence may be appealed.

## **CHAPTER VI Means of Obtaining Evidence**

### **Section I Exams**

#### **Article 242 [Assumptions]**

1. By examining people, places and things, the traces that may have been left behind by the crime and all the evidence relating to the way in which and the place where it was committed, the people who committed it or on whom it was carried out are inspected. was committed.
2. As soon as there is news of the commission of a crime, measures are taken to prevent, where possible, traces from being erased or altered before being examined, prohibiting, if necessary, the entry or transit of strangers at the scene of the crime or any other acts that could jeopardize the discovery of the truth.
3. If the traces left by the crime are altered or have disappeared, the state in which they are found, the places and things that may have existed are described, trying, as far as possible, to reconstruct them and describing the manner, time and causes of the change or disappearance.
4. As long as the competent criminal police or the Magistrate are not present at the scene, it is up to any agent of the authority to provisionally take the measures referred to in paragraph 2, if otherwise there is imminent danger to obtaining the evidence.

#### **Article 243 [Subject to examination]**

1. If someone intends to exempt themselves from or obstruct any due examination or to provide something that should be examined, they may be compelled by decision of the competent Magistrate.
2. Exams that may offend people's modesty must respect the dignity and, as far as possible, the modesty of those who undergo them. Only those who take part in the examination and the competent magistrate are present at the examination, and the examinee may be accompanied by a person he or she trusts, if there is no danger of delay, and must be informed that he or she has this option.

#### **Article 244 [Persons at the examination site]**

1. The police body or the competent judicial authority may determine that one or more people do not leave the exam location and oblige, with the help of public force, to

If necessary, those who wish to leave must remain there until the examination is completed and their presence is essential.

2. The provisions of paragraph 4 of article 242 are correspondingly applicable.

## Section II Magazines and Searches

### Article 245 [Assumptions]

1. When there is evidence that someone hides on their person any objects related to a crime or that could serve as evidence, a search is ordered.
2. When there is evidence that the objects referred to in the previous paragraph, or the accused or another person who must be detained, are in a reserved place and not freely accessible to the public, a search is ordered.
3. Searches and searches are authorized or ordered by order of the competent Judicial Authority, which must, whenever possible, preside over the investigation.
4. The order provided for in the previous paragraph has a maximum validity period of 30 days, under penalty of nullity.
5. The requirements contained in the previous paragraph exclude searches and searches carried out by the police authority in the following cases:
  - a) Terrorism, violent or highly organized crime, when there is solid evidence of the imminent commission of a crime that puts the life or integrity of any person at serious risk. person;
  - b) To which those concerned consent as long as the consent given is, in any way, documented, or;
  - c) Upon arrest in the act for a crime that carries a prison sentence.
6. In the cases referred to in paragraph a) of the previous paragraph, the completion of the investigation is, under penalty of nullity, immediately communicated to the competent judge and assessed by him in order to validate it.

### Article 246 [Search formalities]

1. Before proceeding with the search, except in the cases of no. 5 of the previous article, whoever has the location where the investigation is carried out is available, a copy of the order that determined it, in which the mention that you can attend the investigation and be accompanied or replaced by a person you trust and who can present themselves without delay.
2. If the people referred to in the previous number are missing, the copy is, whenever possible, given to a relative, a neighbor, the doorman or someone who replaces him.
3. Along with the search or during it, a search of people who are in the place may be carried out, if whoever orders or carries out the search has reasons to assume that the assumptions in paragraph 1 of article 245 are met. th.

### Article 247. [Home search]

1. The search of an inhabited house or a closed premises can only be ordered or authorized by the judge and carried out between 6 am and 6 pm, under penalty of invalidity.
2. In the cases referred to in subparagraphs a) and c), no. 4, of article 244, home searches may also be ordered by the Public Prosecutor's Office or carried out by police entities. The provisions of paragraph 6 of article 245 are correspondingly applicable.
3. In the case of a search in a lawyer's office or in a doctor's office, it is, under penalty of nullity, personally presided over by the judge, who previously notifies the president of the respective professional order, or entities that replace them, so that the same person, or one of his delegates, may be present.

4. In the case of a search at an official health establishment, the notice referred to in the previous paragraph is made to the president of the establishment's board of directors or management or to whoever legally replaces him.

#### **Article 248. [Magazine formalities]**

1. Before carrying out the search, the person concerned is given, except in the cases referred to in paragraph 5 of article 245, a copy of the order that determined it, in which it is mentioned that the person may indicate, to witness the investigation, person you trust and introduce yourself without delay.
2. The search must respect the personal dignity and, as far as possible, the modesty of the subject.

## **Section III Seizures**

#### **Article 249. [Objects susceptible to seizure and assumptions thereof]**

1. Objects that have served or were intended to serve the commission of a crime, those that constitute its product, profit, price or reward, as well as all objects that have been left by the agent at the location of the crime, are seized. crime or any other capable of serving as evidence.
2. The seized objects are added to the process, when possible, and, when not, entrusted to the custody of the court official attached to the process or a depositary, with everything being mentioned in the record.
3. Seizures are authorized, ordered or validated by order of the Public Prosecutor's Office or the judge.
4. Criminal police bodies may make seizures during searches or searches or when there is urgency or danger in delay.
5. Seizures carried out by a criminal police body are subject to validation by the Public Prosecutor's Office or the judge, within a maximum period of seventy-two hours.
6. Holders of assets or rights subject to seizure may request the judge to modify or revoke the measure. In this case, the incident is attached to the respective process.
7. If the seized objects are likely to be declared lost in favor of the State and do not belong to the defendant, the judicial authority orders the presence of the interested party and listens to them. -the. The judicial authority does not require the presence of the interested party when this is not possible.

#### **Article 250. [Seizure of correspondence]**

1. Under penalty of nullity, the judge may authorize or order, by order, the seizure, even at post and telecommunications stations, of letters, parcels, valuables, telegrams or any other correspondence, when he has reasonable reasons to believe that:

- a) The correspondence was sent by the suspect or is addressed to him, even if under a different name or through a different person;
- b) The crime is punishable by a prison sentence of more than three years; c)

The diligence will prove to be of great interest for the discovery of the truth or for proof.

2. Under penalty of nullity, the seizure and any other form of control of correspondence between the accused and his defender is prohibited, unless the judge has well-founded reasons to believe that it constitutes the object or element of a crime.
3. The judge who authorized or ordered the investigation is the first person to become aware of the contents of the seized correspondence. If you consider it relevant to the evidence, add it to the file; otherwise, return it to the rightful person, and it cannot be used as evidence, and you are bound by a duty of secrecy in relation to what you have become aware of and have no interest in proving.

#### **Article 251. [Seizure in a lawyer's office or doctor's office]**

1. The provisions of paragraph 3 of article 247 are correspondingly applicable to seizures carried out in a lawyer's office or in a doctor's office.

2. In the cases referred to in the previous paragraph, the seizure of documents covered by professional secrecy, or covered by medical professional secrecy, is not permitted, under penalty of nullity, unless they themselves constitute the object or element of a crime.
3. The provisions of paragraph 3 of the previous article are correspondingly applicable.

#### **Article 252 [Seizure at a banking establishment]**

1. The judge seizes documents, titles, values, sums and any other objects in banks or other credit institutions, even if in individual safes, when he has well-founded reasons to believe that they are related to a crime and if they will prove to be of great interest for discovering the truth or providing evidence, even if they do not belong to the accused or are not deposited in his name.
2. The judge may examine correspondence and any bank documentation to discover the objects to be seized under the terms of the previous paragraph.
3. The examination is carried out personally by the judge, assisted, when necessary, by police entities and qualified technicians, being bound by a duty of secrecy in relation to everything of which they have become aware and is not of interest for the test.

#### **Article 253. [Professional or employee secret and State secret]**

1. The people indicated in articles 209 to 211 present to the judge and the Public Prosecutor's Office, when ordered, the documents or any objects that they have in their possession and should be seized, unless they invoke, in writing, professional secrecy or official status or state secret.
2. If the refusal is based on professional or employee secrecy, the provisions of paragraphs 2 and 3 of article 209 and paragraph 2 of article 210 are correspondingly applicable.
3. If the refusal is based on State secrets, the provisions of paragraph 3 of article 211 are correspondingly applicable.

#### **Article 254. [Copies and certificates]**

1. A copy of the seized documents may be added to the case file, in which case the original will be returned. If it becomes necessary to preserve the original, a copy can be made or a certificate extracted and delivered to whoever legitimately holds it. The copy and the certificate expressly mention the seizure.
2. A copy of the seizure notice shall be delivered, whenever requested, to whoever legitimately held the seized document or object.

#### **Article 255 [Affixing and lifting of seals]**

Whenever possible, seized objects are sealed. When possible, the same people who were present at their affixation are present at the lifting of the seals, who check that the seals have not been violated nor have any alterations been made to the seized objects.

#### **Article 256. [Seizure of perishable, dangerous or deteriorable things]**

1. If the seizure concerns perishable, dangerous or deteriorable valueless things, the judge or the Public Prosecutor's Office may order, depending on the case, their sale or use for a socially useful purpose, destruction, or conservation or maintenance measures necessary.
2. Unless otherwise provided by law, the competent Magistrate determines the form in which the sale must take place, among those provided for in the Civil Procedural Law.
3. The proceeds from the sale, determined under the terms of the previous paragraph, revert to the State after deducting the expenses relating to the respective custody, conservation and sale.

#### **Article 257. [Return of seized objects]**

1. As soon as it becomes unnecessary to maintain the seizure for the purpose of evidence, the seized objects are returned to the rightful party, by order of the judge or at the request of the Public Prosecutor's Office, as part of a preparatory investigation.

2. As soon as the sentence becomes final, the seized objects are returned to the rightful party, unless they have been declared lost in favor of the State.
3. The provisions of the previous paragraphs are subject to the exception of the case in which the seizure of objects belonging to the accused or the person responsible must be maintained as preventive seizure.

## Section IV Telephone tapping

### Article 258 [Admissibility]

1. The interception and recording of conversations or telephone communications may only be ordered or authorized, during the investigation, upon request from the Public Prosecutor's Office, by order of the judge, in relation to crimes:

- a) Punishable by a maximum prison sentence of three years;
- b) Related to drug trafficking;
- c) Relating to weapons, devices, explosive and similar materials;
- d) Smuggling; or
- e) Injury, threat, coercion, wantonness of private life and disturbance of peace and quiet, when committed over the telephone if there is reason to believe that the diligence will prove to be of great interest in discovering the truth.

2. The authorization referred to in paragraph 1 of this article may be requested from the judge in the places where the telephone conversation or communication may take place or from the headquarters of the entity responsible for criminal investigation, in the case of the following crimes:

- a) Terrorism, violent or highly organized crime;
- b) Criminal associations;
- c) Against peace and humanity;
- d) Against State security;
- e) Production and trafficking of drugs;
- f) Counterfeiting of currency or securities equivalent to currency;
- g) Covered by a convention on the safety of air or maritime navigation.

3. The interception and recording of conversations or communications between the accused and his defender is prohibited, unless the judge has well-founded reasons to believe that they constitute the object or element of a crime.

### Article 259. [Operational formalities]

1. A record is drawn up of the interception and recording referred to in the previous article, which, together with the recorded tapes or similar elements, is immediately brought to the attention of the judge who ordered or authorized it, indicating the passages of the recordings or analogous elements considered relevant to the test.

2. The provisions of the previous paragraph do not prevent the criminal police body carrying out the investigation from being previously aware of the content of the intercepted communication in order to be able to carry out the necessary and urgent precautionary measures to secure the means of evidence.

3. If the judge considers the elements collected, or some of them, to be relevant to the evidence, after listening to the recordings, order it to be transcribed into the record and add it to the file; otherwise, order its destruction in the presence of the Public Prosecutor's Office and the defendant's defender, leaving all participants in the operations bound by the duty of secrecy regarding what they have become aware of.

4. For the purposes of the provisions of the previous paragraph, the judge may be assisted, when deemed appropriate, by a criminal police body, and may appoint, if necessary, an interpreter. The provisions of paragraphs 2 and 3 of article 72 apply, with the necessary adaptations, to the transcription.

5. The accused and the assistant, as well as the people whose conversations were listened to, may examine the transcription record referred to in paragraph 3 to find out about the conformity of the recordings and obtain, at their own expense, copies of the elements referred to therein.

#### **Article 260. [Nullity]**

All requirements and conditions referred to in articles 258 and 259 are established under penalty of irremediable nullity.

#### **Article 261 [Extension]**

The provisions of articles 258, 259 and 260 are correspondingly applicable to conversations or communications transmitted by any technical means other than the telephone, namely electronic mail or other forms of data transmission via telematics, as well as to interception of communications between those present.

## **CHAPTER VII Instruction**

### **Section I General provisions**

#### **Article 262 [Purpose of instruction]**

1. The investigation comprises the set of steps that aim to investigate the existence of a crime, determine its agents, their responsibility and discover and collect evidence, in order to decide on the accusation.
2. The investigation must, as far as possible, investigate the reasons and circumstances of the infraction, the antecedents and mental state of its agents, as far as the case is concerned, and the factual elements that are important to know in order to determine compensation for losses and damages.
3. Subject to the exceptions provided for in this Code, news of a crime always gives rise to the opening of an Instruction.

#### **Article 263 [Instruction Phases]**

The instruction comprises:

- a) Preparatory instruction;
- b) The contradictory instruction.

### **Section II Preparatory instruction**

#### **Article 264 [Scope]**

1. The preparatory instruction covers the entire set of evidence that forms the corpus delicti and aims to gather the indictment elements necessary to substantiate the accusation.
2. In the preparatory investigation, not only steps must be taken that lead to proving the defendant's guilt, but also those that may help to demonstrate his innocence and irresponsibility.

#### **Article 265.<sup>o</sup> [Secret Character]**

1. The preparatory instruction is secret.
2. Assistants, as well as the accused, may present memorials or requests for evidentiary measures to the Public Prosecutor's Office, which the latter will take into consideration or grant to the extent that it understands that they can contribute to the discovery of the truth, adding, however, to the case file, within the period prescribed for the gathering of documents, all papers received from the defendant or assistants relating to the process.

3. At any time, the assistant, the offended party and the defendant and other entities to whom the law grants this right, may request information about the status of the case, which must be provided, within five days, by the magistrate to whom the process is affected.

4. The accused has the right to have access to the evidence that served to justify the application of coercive measures. For this purpose, the aforementioned parts of the records are kept separately at the secretariat, by photocopy, for a period of three days, without prejudice to the progress of the process. The duty to keep legal secrecy persists for everyone.

#### **Article 266 [Direction]**

The direction of the preparatory investigation is the responsibility of the Public Prosecutor's Office, to whom the authorities and police agents will provide all the assistance they require for this purpose.

#### **Article 267 [Acts to be carried out by the judge during the preparatory investigation]**

1. During the preparatory instruction, the judge is exclusively responsible for:

- a) Carry out the first judicial interrogation of a detained defendant;
- b) Apply a measure of coercion or property guarantee, except for the term of identity and residence, which may be applied by the Public Prosecutor's Office;
- c) Carry out searches and seizures in a lawyer's office, doctor's office or banking establishment;
- d) Be aware, firstly, of the content of the seized correspondence;
- e) Declare the loss, in favor of the State, of seized assets, when the Public Prosecutor's Office proceeds to archive the instruction;
- f) Perform any other acts that the law expressly reserves for the judge.

2. The judge carries out the acts referred to in the previous paragraph at the request of the Public Prosecutor's Office, police entities in cases of urgency or danger in delay, the accused or the assistant.

3. The request, when coming from the Public Prosecutor's Office or police entities, is not subject to any formalities.

4. In the cases referred to in the previous paragraphs, the judge decides, within a maximum period of twenty-four hours, based on the information that, together with the request, is provided to him, dispensing with the presentation of the case whenever he does not consider it essential .

#### **Article 268 [Acts to be ordered or authorized by the judge during the preparatory investigation]**

1. During the preparatory instruction, the judge is exclusively responsible for ordering or authorizing:

- a) Home searches;
- b) Seizures of correspondence;
- c) Interception, recording or recording of conversations or communications;
- d) The practice of any other acts that the law expressly makes dependent on the order or authorization of the judge.

2. The provisions of paragraphs 2, 3 and 4 of the previous article are correspondingly applicable.

#### **Article 269 [Delegation of instructional powers]**

In crimes that correspond to a quarrel or correctional process, the preparatory instruction may be delegated to the police authorities, without prejudice to the exceptions provided for in the law and its direction by the Public Prosecutor's Office, which may always request the instructing authority, or carry out directly, the additional steps deemed necessary.

#### **Article 270 [Special competence for investigation]**

1. For crimes that carry a prison sentence of more than five years and in all those referred to in special legislation, the special police body is responsible for investigating them, under the direction of the Public Prosecutor's Office which may, at any time, time to invoke instruction.

2. By order of the Attorney General of the Republic, the special police body may also be granted the competence to investigate crimes that correspond to a correctional process, provided that the complexity of the investigation or the circumstantiality of the crime justify it.

### **Article 271 [Exemption from Preparatory Instruction]**

1. The preparatory instruction is waived when the reports collected are authentic in court, in accordance with article 144 of this Code.
2. The preparatory instruction may also be waived by the Public Prosecutor's Office, when the analysis of the report and the evidence collected in the meantime, immediately results in safe and clear evidence of the agent's guilt, regardless of the form of the process and applicable penalties.

### **Article 272. [Deadlines for preparatory instruction]**

1. The preparatory investigation must take place within a maximum period of eight months in the quarrel process and six months in the correctional process.
2. If defendants are arrested, the deadlines are those set out in article 172 of this Code.

### **Article 273 [Archiving and best evidence]**

1. If during the preparatory investigation it is found that there was no crime, or the criminal action has been terminated, or if there are elements of fact that prove the defendant's irresponsibility, the Public Prosecutor's Office will refrain from prosecuting, justifying the your filing order.
2. If it was not possible for the Public Prosecutor's Office to obtain sufficient evidence to verify the crime or who its agents were, the process will await the production of better information.  
trial.
3. If defendants are arrested, they will be immediately released by the judge, upon mandatory request from the Public Prosecutor's Office.
4. In the case of paragraph 2 of this article, the process may continue as soon as new evidence appears.

### **Article 274. [Archiving in case of dismissal of sentence]**

1. If the case is for a crime for which the possibility of waiving the sentence is expressly provided for in criminal law, the Public Prosecutor's Office, with the judge's agreement, may decide to close the case, if the assumptions of that law are met. dismissal.
2. If the accusation has already been filed, the judge may, in the context of a contradictory investigation, while it is ongoing, close the case with the agreement of the Public Prosecutor's Office and the defendant, if the conditions for dismissal of the sentence are met.
3. The archiving decision, in accordance with the provisions of the previous paragraphs, is not subject to challenge.

### **Article 275 [Provisional suspension of the process]**

1. If the crime is punishable by a prison sentence of no more than five years or with a sanction other than prison, the Public Prosecutor's Office may, in the course of preparatory instruction, decide, with the judge's agreement, to suspend the process, through the imposition of injunctions and rules of conduct on the defendant, if the following assumptions are met:
  - a) Agreement of the accused and the assistant;
  - b) Absence of criminal record of the defendant; c) Lack of  
previous application of the provisional suspension of proceedings for a crime of the same nature;
  - d) There is no place for an internment security measure;
  - e) Minor character of the fault; e

f) It must be ensured that compliance with injunctions and rules of conduct sufficiently responds to the prevention requirements that arise in the case.

2. The following injunctions and rules of conduct are enforceable against the defendant:

- a) Compensate the injured party;
- b) Give the injured party adequate moral satisfaction;
- c) Deliver a certain amount to the State or private social solidarity institutions, or provide a service of public interest;
- d) Not exercising certain professions;
- e) Do not frequent certain environments or places;
- f) Not living in a certain place or region;
- g) Not accompanying, hosting or receiving certain people;
- h) Not having in their possession certain objects capable of facilitating the commission of another crime;
- i) Any other behavior especially required by the case.

3. Injunctions and rules of conduct that may offend the dignity of the accused cannot be enforced.

4. To support and monitor compliance with injunctions and rules of conduct, the judge and the Public Prosecutor's Office may, depending on the case, resort to social reintegration services, police entities and administrative authorities.

5. The suspension decision, in accordance with paragraph 1, is not subject to challenge.

#### **Article 276. [Duration, initiative and effects of suspension]**

- 1. The process may be suspended for up to two years.
- 2. The statute of limitations does not run during the process suspension period.
- 3. The provisional suspension of the process may also be requested by the accused, assistant or offended party, and must always have the agreement of the Public Prosecutor's Office and the judge.
- 4. If the defendant complies with the injunctions and rules of conduct, the Public Prosecutor's Office closes the case and cannot be reopened. If you do not comply with them, the process continues and the payments made cannot be repeated.

#### **Article 277 [Prosecution by the Public Prosecutor's Office]**

- 1. If sufficient evidence has been collected during the preparatory investigation to indicate that a crime has occurred and who was responsible for it, the Public Prosecutor's Office will file charges against the person within 10 days.
- 2. Evidence is considered sufficient whenever it results in a reasonable possibility that the defendant will be subject to a penalty or a measure of punishment as a result of it, at trial security.
- 3. The indictment contains, under penalty of nullity:
  - a) Information aimed at identifying the accused;
  - b) The narration, even if synthetic, of the facts that justify the application of a sentence or security measure to the accused, including, if possible, the place, time and motivation for its practice, the degree of participation that the agent had in them and any relevant circumstances for determining the sanction that should be applied to him;
  - c) Indication of the applicable legal provisions;
  - d) Indication of evidence to be produced or requested, namely, the list of witnesses and experts to be heard at trial, with their respective identification;
  - e) The date and signature.
- 4. Except in cases declared to be particularly complex, no more than five witnesses may be appointed in correctional proceedings and twenty in quarrel proceedings.
- 5. In case of connection of processes, a single accusation is filed.

### **Article 278 [Hierarchical complaint]**

1. The orders of abstention and accusation referred to in the previous articles will be notified to the accused, assistant, offended party, as well as to people with the right to become assistants.

2. A hierarchical complaint may be filed against the order of abstention issued by the Public Prosecutor's Office, within a period of five days from the date of notification, to the immediate superior, with this intervention ending with the Attorney General of the Republic.

### **Article 279 [Hierarchical intervention]**

Within fifteen days, the immediate superior of the Public Prosecutor's Office judge who preferred the order of abstention will decide:

- a) Confirming the requested order;
- b) Ordering that the preparatory instruction be continued, with the carrying out of the steps deemed appropriate, which it will specify, giving a deadline for its completion, or;
- c) Order that the public accusation be filed.

### **Article 280 [Private accusation]**

1. In crimes in which withdrawal of the complaint is admissible, the assistant may, within 10 days from the notification given to him by the Public Prosecutor's Office, file charges, even if the Public Prosecutor's Office has not carried out criminal action.

2. The provisions of the previous paragraph are applicable to the person with the right to become an assistant, as long as they request to be constituted as such, with the accusation that they make.

3. The option granted in paragraph 1 of this article is suspended if the assistant has made use of the hierarchical complaint, and until this has been decided and notified.

4. Once the preparatory instruction is complete, when the procedure depends on a private accusation, the Public Prosecutor's Office notifies the assistant so that he or she can file a private accusation within 10 days, and the Public Prosecutor's Office may follow it up, for the same facts, within a period of 5 days.

5. The provisions of article 277 apply to the prosecution of assistants.

## **Section III Contradictory instruction**

### **Article 281 [Purpose and scope of instruction]**

1. The contradictory instruction aims at judicial proof of the decision to accuse or to archive the preparatory instruction, in order to submit or not the case to trial.

2. The contradictory instruction is optional and contradictory in nature.

3. There is no place for instruction in special forms of proceedings, without prejudice to the provisions of article 285.

### **Article 282. [Request for opening contradictory instruction]**

1. The opening of the contradictory investigation may be requested within 10 days from the notification of the accusation or orders awaiting better evidence or archiving:

- a) By the accused, in relation to the facts for which the Public Prosecutor's Office or the assistant, in the case of proceedings dependent on private accusation, have brought charges; or
  - b) By the assistant, if the procedure depends on a complaint, regarding facts for which the Public Prosecutor's Office has not brought charges.
2. The request can only be rejected because it is out of time, due to the judge's incompetence or due to the legal inadmissibility of the contradictory instruction.
3. The request is not subject to special formalities, but must contain, in summary, the factual and legal reasons for disagreement with the accusation or non-accusation, as well as

as, whenever applicable, the indication of the acts of contradictory investigation that the applicant would like the judge to carry out, the means of proof that have not been considered in the preparatory investigation and the facts that through one or the other expected to prove.

#### **Article 283 [Direction and content of contradictory instruction]**

1. The contradictory instruction is directed by the judge, assisted by the police authorities and is formed by the set of instructional acts that he intends to carry out and, obligatorily, by a contradictory debate, in which the Public Prosecutor's Office, the defendant, participate the defender, the assistant and his lawyer, but not the civil parties.

2. The Public Prosecutor, assistant and the defender have the right to participate in all investigation procedures, being bound by the secrecy of justice, when the contradictory investigation is secret.

3. The judge carries out the acts of investigation in the order he deems most convenient for the ascertainment of the truth, and may reject the requested acts that are not of interest to the investigation or serve only to delay the progress of the process, carrying out or ordering those acts ex officio. that you consider useful.

4. An appeal may be made against the order of the judge rejecting the acts of instruction, which may be appealed at the end of the instruction in contradiction with the one that may be filed against the order of pronouncement or non-indictment.

5. All evidence that is not prohibited by law is admissible in the investigation. The judge, in contradictory instructions, interrogates the defendant when he deems it necessary and whenever he requests it.

#### **Article 284. [Deadline for contradictory instruction]**

The judge will close the contradictory investigation within a maximum period of two months if there are defendants in prison, or with an obligation to remain in their housing, or within three months if there are none.

#### **Article 285 [Instructional debate]**

1. Once the required investigative steps have been completed, there will be room for contradictory debate.

2. The debate will be scheduled within 5 days from the date of the last act, with the judge designating the day, time and place of the debate.

3. The accused, his defender, the Public Prosecutor's Office and the assistant, as well as the people who must be questioned during the debate or at a previous time, will be notified of the same.  
at the same.

#### **Article 286 [Purpose of the instructional debate]**

The instructional debate aims to allow a discussion, before the judge, in an oral and contradictory manner, about whether during the course of the instructions, sufficient evidence of fact and law resulted to justify the defendant's submission to trial.

#### **Article 287 [Postponement of debate]**

The instructional debate may only be postponed once for a compelling reason.

#### **Article 288 [Decision on the instructional debate]**

1. Once the preliminary debate has ended, the judge, once the case has been resolved, issues an order of pronouncement or non-indictment, which is immediately read.

2. If an order of indictment is issued and there has been an accusation by the Public Prosecutor's Office or assistant, the order may be made by reference to them.

3. The order may be made verbally and dictated into the minutes, considering those present to have been notified.

4. When the complexity of the case under investigation justifies it, the judge, when closing the contradictory debate, orders that the case be concluded in order to pronounce, in the

maximum period of five days, the order of pronouncement or non-indictment. In this case, the judge immediately communicates to those present the date on which the order will be read, with the provisions in the last part of the previous paragraph being correspondingly applicable.

5. The provisions of articles 273 and 277 apply to orders of pronouncement or non-pronouncement with the necessary adaptations.

#### **Article 289 [Nullity of the decision]**

1. The pre-trial decision is null and void in the part in which it prosecutes the defendant for facts other than those described in the Public Prosecutor's or assistant's indictment, or in the request to open the contradictory pre-trial.
2. Nullity is argued within eight days from the date of notification of the decision.

#### **Article 290. [Appeal against decision]**

1. An appeal may be appealed against the decision of the contradictory debate that the defendant faces the facts contained in the indictment, to be lodged within 15 days before the Supreme Court of Justice, which is processed as an appeal in civil matters, rising immediately, separately and with merely devolutionary effect.
2. The order rejecting the allegation of nullity set out in the previous article is appealable, which is processed under the terms of the previous number.
3. An appeal may also be made against the decision not to issue a ruling, which is processed as an appeal in civil matters and is raised immediately, in the files themselves, with suspensive effect.
4. If there is no appeal against the pronouncement order or if there is one under the terms of paragraph 1, the case will be immediately sent for judgment.

## **CHAPTER VIII Pronunciation and order that designates day for judgment**

#### **Article 291 [Process sanitation]**

1. If there has been no contradictory instruction, once the case has been received, the judge will rule on the preliminary incidental questions that may impede the assessment of the merits of the case that he may immediately be aware of.
2. The accusation will be rejected when:
  - a) It is verified that the facts contained therein do not constitute a criminal crime or that the criminal procedure has been terminated;
  - b) If there is not sufficient proof of the elements of the crime or who were its agents.
3. In the situation described in no. 2 al. a) the judge will order the archiving of the case.
4. In the situation of no. 2 al. b) the files will be reopened as soon as new evidence emerges and the criminal proceeding is admissible.
5. Once the accusation is received, a day will be designated for trial, under the terms set out in article 293.

#### **Article 292 [Reopening of the process]**

As the case files await the production of better evidence, and new evidence emerges, the judge will receive the accusation deduced under the impulse of the Public Prosecutor's Office, which will be opened for review in the process, or will send the case files to the Public Prosecutor's Office for further preparatory instruction, taking advantage of all the acts already produced in the process.

#### **Article 293 [Order designating day for trial]**

1. Once there has been a contradictory instruction, and any previous issue has been resolved, the judge will issue an order designating a day for trial which will contain:

- a) Indication of the applicable facts and legal provisions, which can be done by reference to the accusation;
- b) Indication of the place, day and time of the appearance;
- c) The appointment of the defendant's defender, if not yet constituted or appointed in the process; d) Defining the procedural status of the accused; and
- e) The date and signature of the judge who makes the order.

2. The order, accompanied by a copy of the accusation or pronouncement, is notified to the Public Prosecutor's Office, as well as to the accused, the assistant, the civil parties and their representatives, at least 10 days before the date set for the hearing. Notification of the defendant and assistant will be made in person.

3. Without prejudice to the appeal against the order determining the preventive detention of the accused or applying any other measure of coercion to him, there will be no appeal against the order designating a day for trial.

#### **Article 294. [Communication to other judges]**

In the case of a crime falling within the jurisdiction of the collective court, the order designating the date for the trial will be notified to the other judges who make up the court.

## **CHAPTER IX Judgment and sentence in proceedings of quarrel**

### **Section I of the Trial**

#### **Article 295 [Contestation and list of witnesses]**

1. The defendant, within fifteen days from the date of notification of the order designating the date for trial, presents, if desired, the defense accompanied by the list of witnesses.
2. The objection is not subject to special formalities.
3. Along with the list of witnesses, the defendant will indicate the experts who must be notified for the hearing.
4. Add the objection and the list of witnesses, the Public Prosecutor's Office and the assistant, if any, will be notified.
5. No more defense witnesses may be named than those offered by the prosecution.

#### **Article 296. [Addition or change to the list of witnesses]**

The list of witnesses may be changed or added, within the limits of the previous article, at the request of whoever offered it, provided that the change or addition can be communicated to the other parties up to 3 days before the date of the trial hearing. .

#### **Article 297. [Publicity of the hearing]**

1. The trial hearing is public, unless the court, of its own motion or at the request of any of the participants, understands that publicity may offend the morals, modesty of any of the participants or public order, because in these cases it will declare the hearing secret -

facio.

2. The statement referred to in this article will be made at the beginning of the hearing, but may be made later, when deemed necessary at a later date.
3. If the hearing is secret, only lawyers, or other people who have a professional interest in it and who the president allows, may attend, in addition to those who must intervene in the process.

4. The reading of the jury's decision, when it intervenes, and the sentence will always be public.

#### **Article 298. [Duties of conduct of people attending the hearing]**

1. People attending the hearing must observe the greatest respect and respect, not expressing approval or disapproval through public signs, not exciting riots or violence, nor disturbing in any way its regular functioning. The president of the court will proceed against offenders in accordance with article 59.

2. Minors under the age of 18 will not be able to attend the trial hearing, unless they are called to the process, and they will leave the room as soon as their presence is unnecessary.

3. The president of the court may also, for reasons of order, morality or hygiene, limit entry into the courtroom or order the exit of any person whose presence is not necessary.

#### **Article 299 [Presidency of the hearing and powers of the president]**

1. The hearing, if another solution is not provided by the judicial organization, will be presided over by the judge of the case or court where it is judged, who will direct the work and maintain the order and discipline necessary for its functioning.

2. In the collective court, if another solution is not the result of the judicial organization, the judge of the case in which the trial will take place will preside, unless he is a substitute, as in this case the most senior effective judge will preside.

3. The president is responsible for disciplining and directing the work, without prejudice to other powers and duties assigned to him by law:

a) Carry out interrogations, inquiries, examinations and any other acts of production of evidence, even if at the expense of the order legally established for them, whenever deemed necessary to discover the truth;

b) Order, by appropriate means, the appearance of any person and the reproduction of any legally admissible statements, whenever deemed necessary to discover the truth;

c) Order the reading of documents, or instruction files, in cases where that reading is legally admissible;

d) Receive oaths and commitments;

e) Take all preventive, disciplinary and coercive measures, legally admissible, that prove necessary or appropriate to put an end to acts of disruption of the hearing and to guarantee the safety of all procedural participants;

f) Guarantee the adversarial process and prevent the asking of legally inadmissible questions;

g) Direct and moderate the discussion, prohibiting, in particular, all manifestly impertinent or delaying procedures.

#### **Article 300 [Competence of the court]**

Without prejudice to the powers of the president of the hearing, when this Code states that it is the court's responsibility to take any deliberation, it will be understood that this power belongs to the judges who make up the collective court, if they intervene in the case, and to the individual judge in other cases.

#### **Article 301 [Conduct of lawyers]**

If lawyers or defenders in their arguments or requests deviate from the respect due to the court, or manifestly and abusively seek to embarrass or delay the regular progress of the case, use insulting, violent or aggressive expressions against the public authority or any other person, or make explanations or comments about the

matters that are unrelated to the process and that in no way serve to clarify it, will be politely warned by the president of the court; If, after being warned, they continue, they may be withdrawn from the floor and entrust the defense to another lawyer, without prejudice to criminal and disciplinary proceedings, if applicable.

### **Article 302 [Situation and duties of conduct of the defendant]**

1. The accused, even if he is detained or imprisoned, attends the hearing freely in person, unless precautionary measures are necessary to prevent the danger of escape or acts of violence.
2. The detained or arrested defendant is, whenever possible, the last to enter the courtroom and the first to be removed from it.
3. The defendant is obliged to the same duties of conduct that, under the terms of article 298, impose on people attending the hearing.
4. If, during the hearing, the defendant fails to show due respect to the court and, after warning from the presiding judge, persists in his behavior, he will be ordered to be removed to any court room, without prejudice to the right to attend the final interrogation. and the reading of the sentence and the duty to return to the room whenever the court deems your presence necessary.

### **Article 303 [Continuity of the trial hearing]**

1. The hearing will be continuous; the presiding judge may only interrupt it when absolutely necessary.
2. When the hearing is interrupted, the time on the same day or any other day at which it will continue will be immediately designated.
3. If there is a jury, the one selected is competent to continue to intervene in the process, and the acts performed will not be repeated, even if some jurors have to be replaced.
4. In cases submitted to a collective court, if any of the judges who have attended one or a few sessions is unable to take part in subsequent sessions and is replaced, the court will decide whether or not the acts already carried out should be repeated. If the impossibility is temporary, the trial may be postponed for as long as necessary.
5. If any of the judges of the collective court is transferred or promoted, they will only stop participating in the trial, for reasons of force majeure, in which case the trial must be repeated.

### **Article 304 [Hearing on the opposing party's requests]**

1. The judge will always hear from the Public Prosecutor's Office and the representatives of the accusing party about the requests made by the defense representatives and the latter about what they have requested.
2. The evidence presented during the hearing is subject to the adversarial principle, even if it was produced ex officio by the court.

### **Article 305 [Defendant's defender]**

The accused will be assisted at the hearing by a defender appointed by him or her or appointed by the judge, in accordance with article 42, whenever possible with his agreement.

### **Article 306 [Absence of the Public Prosecutor's Office or representatives of the parties]**

1. Once the hearing has opened, representatives of the prosecution and defense, the accused, the offended party, witnesses, experts and other people whose appearance has been ordered will be called.
2. If the Public Prosecutor is not present, the judge will appoint someone to replace him. In this case, the nominee will be given some time to examine the file if he/she requests it.
3. When the defense representative does not appear, the judge will duly replace him and will also grant the nominee some time to examine the case, confer with the accused and present the defense, when he so requests.

4. If the representative of the accusing party is absent, the trial will continue, but he will be allowed to intervene as soon as he appears.

### **Article 307 [Presence of the accused]**

1. The presence of the accused at the trial hearing is mandatory, with the exceptions provided for the necklaces.
2. The defendant who must answer to a certain court, according to the general rules of jurisdiction, and is imprisoned in a different district for the commission of another crime, is requested from the entity that has him under his control.
3. Whenever the defendant is practically unable to attend the hearing due to age, serious illness or absence abroad, he or she may request or consent for the hearing to take place in his/her absence. Such a request may be made by a defender or agent with special powers.

### **Article 308 [Defendant's absence]**

1. If the accused, duly notified, does not appear at the trial hearing, nor justify his absence within five days, he will be ordered to appear in custody, if the court has reason to believe that the trial will be able to take place on the same day.
2. If the provisions of paragraph 1 are not possible, the hearing will be postponed, and the defendant will be ordered to appear in custody on the new designated date, if there is no justification for his absence.
3. If any defendant is absent for a justified reason, the hearing will be postponed, up to a maximum of two postponements.
4. The trial hearing cannot be postponed more than twice, based on the defendant's absence.
5. If several defendants are arrested, the court will separate the charges and judge the defendants present immediately, unless this separation results in prejudice to the defense of the defendants or to the discovery of the material truth.
6. Once the trial hearing has started, if for a serious reason it has to be interrupted, it will continue in the shortest possible time, never exceeding 30 days between both sessions, except in cases where the evidence was recorded or reduced to writing, under penalty of forfeiture of the evidence produced.

### **Article 309 [Appearance of the offended party]**

1. The offended party, even if it is a civil party, is not obliged to appear in person, unless this is expressly determined.
2. The accused may request the personal appearance of the offended party, showing that it is essential to clarify the truth.
3. If the offended party does not appear, having been duly notified, the provisions of article 81 will be observed in the applicable part.

### **Article 310 [Lack of declarants and witnesses]**

1. The hearing cannot be postponed due to the absence of any person who, being prohibited from testifying as a witness, has to give statements at the hearing, unless the court understands that their presence is essential to clarify the truth.
2. In the absence of a witness who has been duly notified, the judge, after hearing the Public Prosecutor's Office and the defender, will decide whether the hearing should continue or be postponed, depending on whether or not the witness's testimony is considered unnecessary. If the hearing is ordered to continue and during it the need for the presence of witnesses is recognized, it may also be possible to decide to postpone it. In any case, the new hearing will be scheduled for a delay that does not exceed thirty days.

### **Article 311 [Preliminary questions]**

1. The court, before beginning the production of evidence, will be aware of nullities, legitimacy, exceptions or any issues that may impede the assessment of the merits of the case, on which there has not yet been a decision, and which the court may, from the outset, appreciate.
2. If there are witnesses to inquire about any exception or incident, the court must judge them, once the respective evidence has ended. If the court does not have information to decide immediately, it will consider the issues referred to in this article in the final sentence.

### **Article 312 [Interrogation of the accused]**

1. The defendant will be interrogated by the president of the court and first asked about his name, status, affiliation, age, place of birth, residence, whether he can read and write, whether he has ever been arrested or responded and, if so, when and for what reason. Failure to answer these questions will result in the defendant committing a crime of disobedience or, if he is not telling the truth, a crime of false statements. You will then be questioned about the facts of which you are accused.
2. Before beginning the interrogation of the accused, regarding the facts of which he is accused, the judge must warn him that he is not obliged to answer the questions that will be asked of him, as it is only intended to provide him with the opportunity to defend themselves and contribute to clarifying the truth, and not obtain elements for their conviction.
3. The president of the court may also, at any time, during the production of evidence, ex officio or at the request of the prosecution or defense, when he deems it appropriate, to ask the accused any questions about a fact or circumstance that is of interest to the discovery of the truth, or compare it with witnesses, other defendants or the offended party and other documentary evidence.

### **Article 313 [Confession]**

1. If the accused declares that he intends to confess the facts alleged against him, the president, under penalty of irremediable nullity, asks him if he does so of his own free will and without any coercion, as well as if he intends to make a confession full and without reservations.
2. Full and unreserved confession implies:
  - a) Renunciation of the production of evidence relating to the alleged facts and consequent consideration of these as proven;
  - b) Proceed immediately to the oral arguments and, if the accused should not be acquitted for other reasons, to the determination of the applicable sanction; c) Reduction of the court tax by half.
3. Exceptions to the provisions of the previous paragraph are cases in which:
  - a) There are co-accused and there is no full, unreserved and coherent confession from all of them;
  - b) The court, in its conviction, suspects the free nature of the confession, namely due to doubts about the full imputability of the accused or the veracity of the facts confessed; or
  - c) The crime is punishable by a prison sentence of more than two years.
4. If the full and unreserved confession is verified, in the cases mentioned in the previous paragraph, or the partial confession or with reservations, the court decides, in its free conviction, whether it should take place and to what extent, regarding the facts confessed, the production of evidence.

### **Article 314 [Interrogation if there are several defendants]**

If there are several defendants, they may be interrogated separately or in the presence of each other, as the Court deems most convenient for discovering the truth.

### **Article 315. [Who carries out interrogations and statements]**

1. Statements may be made to the offended parties at any time, during the production of evidence, after the interrogation of the accused and whenever necessary.

2. Questions to the accused, the offended, the experts and any other person who must make statements will always be asked by the president of the court, but both the prosecution and the defense may ask those questioned to clarify their answers or to ask them new ones. questions, with the aim of clarifying the truth, and the president may reject them if he understands that the questions are unnecessary or prohibited by law.

### **Article 316. [Who cannot testify as a witness at the trial hearing]**

Persons prohibited from being so, under the terms of article 218, will not be able to testify as witnesses at a trial hearing and those indicated in article 206 of this Code will not be obliged to testify.

### **Article 317 [Collection of witnesses before testifying]**

While they do not testify, the witnesses will be collected in a room, from where they will leave as they are called to testify, taking precise precautions so that the witnesses, before testifying, do not communicate with each other about the facts discussed. node  
process.

### **Article 318 [Oath]**

Before testifying, each witness will take an oath of honor before the president of the court and will then be asked about their name, status, profession, age, place of birth, residence and any other circumstances designed to identify them; if you are a relative, employee or in any other way dependent on the defendants, the offended parties or the accusing party or if you are a friend or enemy of any of them.

### **Article 319 [Interview of witnesses]**

1. Witnesses will be questioned by the representatives of the prosecution and defense who produced them, about the facts they have alleged and, at the end of the interrogation, the representatives of the opposing party, the president and the judges or jurors who make up the court will be able to ask them any questions you deem necessary to clarify the truth.

2. If, in order to clarify the truth, it seems necessary to question any witness about a new, unalleged fact, he or she may be asked about it, as long as the president of the court authorizes it.

3. When jointly accusing the Public Prosecutor's Office and assistants, any of their respective representatives may ask witnesses who have not offered, after being questioned, the questions necessary to clarify the material truth.

### **Article 320 [Prohibited questions]**

The president of the court will prevent witnesses from being asked suggestive, misleading, impertinent or vexatious questions, warning those who ask them and, if they insist, put an end to the interrogation, or order that the questions be formulated through him.

### **Article 321 [Duty of presence of witnesses and declarants]**

Witnesses and people called to give statements, after being questioned, must remain in the hearing room until the production of evidence is completed, unless the president, after hearing the representatives of the prosecution and defense, authorizes them to leave beforehand.

### **Article 322 [Production of evidence and production order]**

1. The court orders, ex officio or upon request, the production of all means of evidence whose knowledge it considers necessary to discover the truth and to a good decision in the case.

2. The evidence will be produced in the order established by the court. Normally, the defendant's witnesses will be examined last.

### **Article 323 [New evidence]**

1. If, during the discussion of the evidence, new elements of evidence become known that could clearly influence the good decision of the case and the discovery of the truth, the court may order, even ex officio, that they be produced, postponing the hearing for the necessary time to allow the defense and prosecution to comment on the same and making this recorded in the minutes.
2. The court may decide on the admission of new evidence as soon as requested or reserve the decision until the end of the production of evidence.
3. The jury is responsible for deciding whether to admit the evidence referred to in this article in cases in which it intervenes.
4. If the evidence offered comes from witnesses who are present at the hearing, the court, after hearing the prosecution and defense, will decide whether they should be immediately admitted to testify or whether discussion of the case should be postponed.

### **Article 324. [Valuation of evidence and reading of statements given in the investigation]**

1. Only evidence that has been produced or examined at a hearing is valid at trial, namely for the purpose of forming the court's conviction.
2. Their written statements during the investigation will not be read to the witnesses, except at the end of the statement, to clarify or complete the statements given at the trial hearing, or when they have been given before the judge and in the presence of the Minister. public and the defendant's defender.
3. To form the court's conviction, statements made by the accused before the judge and in the presence of his defender may also be read, provided that he has given statements at a hearing.

### **Article 325 [Disclosure of other crimes committed by the defendant]**

If, during the discussion, the defendant proves guilty of other crimes of a public nature, the Public Prosecutor's Office may request that the respective file be drawn up and the statements proving these crimes, if they were given orally, be recorded, or that a certificate be extracted, if it was in writing, to initiate the respective procedure or send this record and the certificates that it deems appropriate to the Public Prosecutor's Office, if the process must continue in another court.

### **Article 326 [Convocation for a crime other than the accusation]**

1. The court may convict for a crime other than that for which the defendant was accused, even if it is more serious, as long as its constituent elements are facts contained in the pronouncement order or equivalent and inform the defendant of the change in qualification legal and grant a period, not exceeding 10 days, to organize the defense.
2. The decision referred to in this article can never result in a sentence exceeding the jurisdiction of the respective court.
3. Aggravating circumstances of recidivism and criminal habituality, which result from the criminal record or statements made by the defendant, will always be taken into consideration, as long as they have been alleged.

### **Article 327. [Convocation to a different crime, based on facts not charged]**

1. The court may convict for a crime other than that for which the defendant was accused, based on the facts alleged by the defense or those resulting from the discussion of the case, even if more serious.
2. The provisions of the previous paragraph only apply if the Public Prosecutor's Office, the accused and the assistant are in agreement with the continuation of the trial for new, more serious facts, on which they will be heard and their position recorded in the minutes, if they do not determine the court's incompetence.

### **Article 328 [Oral arguments]**

1. Once the evidence has been produced, the president of the court gives the floor, successively to the Public Prosecutor's Office, the assistant's and civil parties' lawyers and the defendant's defender, for oral arguments in which they present the conclusions, in fact and in law, that they have extracted from the evidence produced.

2. A reply is admissible, to be made only once, however, the defendant's defender, if he asks to speak, is always the last to speak, under penalty of nullity. The reply must be contained within the limits strictly necessary to refute opposing arguments that have not previously been discussed.

3. Oral arguments cannot exceed, for each speaker, one hour and rebuttals twenty minutes. The president may, however, allow anyone to continue speaking who, after the maximum legally permitted time has elapsed, requests it based on the complexity of the case.

4. In exceptional cases, the court may order or authorize, by order, the suspension of allegations for the production of supervening evidence, when this proves to be essential for the good decision of the case; the order sets the time granted for that purpose.

### **Article 329. [Last statements by the defendant and closure of the discussion]**

1. After the allegations, the president asks the defendant if he has anything else to allege in his defense, listening to him in everything he declares for her benefit. The court then retires to deliberate.

2. All judges and jurors who make up the court participate in the deliberation, under the direction of the president.

3. Each judge and each juror shall state the reasons for their opinion, indicating, whenever possible, the means of evidence that served to form their conviction, and vote on each of the questions, regardless of the vote they expressed. about others. Abstention is not permissible.

4. The president collects the votes, starting with the judge with the shortest service, and votes last. In the jury court, the jurors vote first, in ascending order of age.

5. Deliberations are taken by a simple majority of votes.

### **Article 330 [Secret of deliberation and voting]**

1. Participants in the act of deliberation and voting referred to in the previous article may not reveal anything that took place during it and relate to the cause, nor express their opinion on the deliberation taken.

2. Violation of the provisions of the previous paragraph is punishable by the sanction provided for in article 450 of the Penal Code, without prejudice to the disciplinary liability to which it may give rise.

## **Section II of the Judgment**

### **Article 331 [Question of culpability]**

1. Once the matter of fact is established, and if there are no prior or incidental questions that impede the knowledge of the merits of the case, the court, through its president, submits the following questions for discussion:

- a) Whether the constituent elements of the type of crime were verified;
- b) Whether the defendant committed the crime or participated in it;
- c) Whether the defendant acted negligently;
- d) If any cause exists that excludes illegality or guilt;
- e) If there are any other assumptions on which the law makes the punishability of the agent dependent or the application of a security measure to him;

- f) Whether the assumptions on which the arbitration of civil compensation depends have been met.
2. The president then lists in detail and submits for deliberation and voting all questions of law raised by the facts referred to in the previous paragraph.

#### **Article 332 [Issue of determining the sanction]**

1. If, from the deliberations and votes carried out under the terms of the previous article, it results that the defendant should be subject to a sentence or security measure, the president reads or orders to read all the existing documentation in the case file relating to the defendant's criminal record, the expertise on his personality and the social report, if any.
2. The president then asks whether the court considers it necessary to produce additional evidence to determine the type and measure of the sanction to be applied.
3. If, in the deliberation and voting referred to in the final part of the previous article, more than two opinions are expressed, the votes in favor of the more serious sanction are added to those in favor of the immediately lower severity sanction, until obtain a majority.

#### **Article 333. [Drafting and signing of the sentence]**

1. Once the deliberation and voting has concluded, the president, or, if he is defeated, the most senior judge of those who have expired, prepare the sentence in accordance with the positions that have expired.
2. Then, the sentence is signed by all the judges and jurors and if any of the judges signs in defeat, he states precisely the reasons for his vote regarding the matter of law.

#### **Article 334 [Sentence requirements]**

1. The sentence begins with a report that contains:
  - a) Information aimed at identifying the accused;
  - b) Indications aimed at identifying the assistant and the civil parties;
  - c) Indication of the crime or crimes attributed to the defendant, according to the accusation, or pronouncement, if any;
  - d) A summary indication of the conclusions contained in the defense, if one has been presented.
2. The report is followed by the reasoning, which consists of a list of proven and unproven facts, as well as a statement, as complete as possible, albeit concise, of the reasons, in fact and in law, that support the decision, indicating the evidence that served to form the court's conviction.
3. The sentence ends with the device that contains:
  - a) The applicable legal provisions;
  - b) The condemnatory or acquittal decision;
  - c) The decision regarding the civil request;
  - d) Indication of the destination to be given to things or objects related to the crime;
  - e) The date and signatures of the court members.
4. The sentence complies with the provisions of this Code and the Judicial Costs Code regarding court taxes, costs and fees.

#### **Article 335 [Reading of the sentence]**

1. The final sentence will be drawn up within a maximum period of 30 days and read publicly in an audience by the president of the court or, in case of impossibility, by one of the judges.
2. In the case of a conviction, the president of the court, deeming it appropriate, will make an address to the defendant, condemning his behavior and urging him to amend his ways.

### **Article 336 [Condemnation sentence]**

1. The sentencing sentence specifies the grounds on which the choice and measure of the sanction applied were chosen, indicating in particular, if applicable, the beginning and regime of its compliance, other duties imposed on the convicted person and their duration, also taking into account the social reintegration of the defendant.
2. For the purposes of the provisions of this Code, a conviction is also considered to be one that has decreed a waiver or exemption from the sentence.
3. Whenever necessary, particularly in cases where an appeal against the decision is lodged, the court shall re-examine the defendant's situation, subjecting him or her to permissible coercive measures appropriate to the precautionary requirements that the case requires, and must in particular take into account the decision already given.

### **Article 337 [Absolute sentence]**

1. The acquittal sentence declares the extinction of any measure restricting freedom and orders the immediate release of the pre-emptively detained defendant, unless he must remain imprisoned for another reason or undergo a security measure of internment.
2. The acquittal sentence condemns the assistant to court taxes, costs and fees, under the terms set out in this Code and the Judicial Costs Code.
3. If the crime was committed without charge, the sentence is acquittal; but if a security measure is applied to it, it counts as a conviction for the purposes of the provisions of paragraph 1 of the previous article and for the defendant's appeal.

### **Article 338 [Publication of acquittal sentence]**

1. When considered justified, the court orders the publication in full or in extract of the acquittal sentence in a newspaper indicated by the defendant, provided that the latter requests it until the end of the hearing and there is an assistant appointed in the process.
2. The expenses are borne by the assistant and are considered costs.

### **Article 339 [Nullment of sentence]**

1. The sentence is null and void:
  - a) That does not contain the information referred to in paragraph 2 and paragraph b), paragraph 3, of article 334; or
  - b) Convict for facts other than those charged or pronounced, if any, outside the cases and conditions set out in articles 326 and 327.
  - c) When the court fails to rule on issues that it must consider or is aware of issues that it could not be aware of.
2. The nullities of the sentence must be argued or recognized in appeal, and the court is permitted to remedy them, applying, with the necessary adaptations, the provisions of paragraph 4 of article 375.<sup>o</sup>

### **Article 340 [Correction of sentence]**

1. The court proceeds ex officio or upon request, to correct the sentence, when:
  - a) Outside of the cases provided for in the previous article, the provisions of article 334 have not been observed or have not been fully observed.
  - b) The sentence contains an error, oversight, obscurity, ambiguity whose elimination does not imply essential modification.
2. If the sentence has already been appealed, the correction is made, when possible, by the court competent to hear the appeal.
3. The provisions of the previous paragraphs are correspondingly applicable to judicial orders.

### **Article 341 [Status for civil damages in case of acquittal]**

In cases of acquittal on the criminal charge, the court will sentence the defendant to civil compensation, provided that the offense of this nature or liability based on risk is proven.

### **Article 342 [Minutes of the trial hearing]**

1. The minutes of the hearing contain:

- a) The place, date and time of opening and closing of the hearing and the sessions that comprise it put;
- b) The name of the judges, jurors and the Public Prosecutor's representative;
- c) The identification of the accused, the defender, the assistant, the civil parties and their respective lawyers;
- d) The identification of witnesses, experts, technical consultants and interpreters and the indication of all evidence produced or examined at the hearing;
- e) The decision to exclude or restrict advertising, in accordance with article 297;
- f) The requests, decisions and any other indications that, by law, must be included therein;
- g) The signature of the president and the court official who draws it up.

2. Whenever there is no incident at the trial hearing for which the judge will issue an order, it will only be stated in the minutes that the people summoned appeared, duly identified when heard, and that, once the evidence has been produced and the allegations, the sentence was handed down.

3. The testimonies of witnesses and the statements of the offended parties and defendants, when they must be written, will be included in the minutes themselves.

### **Article 343 [Requests and verbal protests]**

All requests and verbal protests will be included in the minutes of the hearing, and the president of the court may order that the respective transcription be made only after the sentence, if he considers them dilatory.

## **CHAPTER X Judgment and sentence in proceedings Correctional**

### **Article 344 [Supplementary rules]**

The trial and sentence in correctional proceedings are governed, with the necessary adaptations, by the provisions of the previous chapter with the following specialties.

### **Article 345 [Submission of the objection]**

1. The defendant, within ten days from the date of notification of the order designating the day for trial, presents, if desired, the defense accompanied by the list of witnesses, and may also present it at the beginning of the trial hearing.
2. Once the objection is presented at the trial hearing, the judge informs the Public Prosecutor's Office and gives it time to analyze it, interrupting the hearing if necessary.

### **Article 346 [Continuity of the trial hearing]**

If, during the course of the hearing, the judge is unable to continue presiding over it, the production of testimonial evidence, the interrogation of the accused and the offended party and the statements of the experts will only be repeated, when they have been given orally at the hearing. If the judge's inability is temporary, the hearing may be postponed for a period not exceeding one month.

### **Article 347. [Writing of written statements]**

1. The production of evidence will be reduced to writing, if, until the beginning of the interrogation of the accused at a trial hearing, the Public Prosecutor's Office, the assistant or the accused's defender, expressly declare that they will not waive an appeal.
2. If the evidence produced is to be reduced to writing, the court will record it, and may use stenographic, stenographic or other means other than ordinary writing, as well as resorting to magnetic and audiovisual recording.

3. When stenographic, stenographic or other means other than ordinary writing are used, the official who used them, or, if this is impossible or absent, a suitable person, makes the transcription in the shortest possible period. Before signing, the entity that presided over the act ensures that the transcription is in compliance.

4. Stenographed sheets and steno-typed or recorded tapes are attached to the file or, if possible, duly stored after being sealed, numbered and identified with the process to which they refer. Any opening or closing of saved records is mentioned in the record by the entity carrying out the operation.

#### **Article 348 [Oral arguments]**

Oral arguments cannot exceed, for each speaker, twenty minutes and replies ten minutes. The president may, however, allow those who, after the maximum legally permitted time has elapsed, to continue speaking, so reasonably request based on the complexity of the case.

#### **Article 349 [Sentence]**

The sentence can be pronounced verbally and dictated into the minutes, considered to have been notified to all those present.

## **CHAPTER XI The process of transgression**

#### **Article 350 [News report]**

1. Any authority, agent of the authority, public servant in the exercise of their functions, who witnesses any contravention or transgression, raises or orders to raise a report with the formalities of article 143, which is authentic in court under the terms of article 144.

2. A single report may be filed for different crimes committed on the same occasion or related to each other, even though the perpetrators are different.

#### **Article 351 [Voluntary payment and referral of the case to Court]**

1. If the misdemeanor or transgression only involves a fine, voluntary payment of the fine is permitted, at least.

2. When possible, the offender is notified, at the time of the fine, of the option of voluntary payment, indicating the time and place at which it can be made.

3. Payment can be made within 15 days, awaiting the report at the public office where voluntary payment can be made, during this period, after which the report is sent to the competent Court, at the within five days.

#### **Article 352 [Decision on the report]**

1. Sending the case to Court is equivalent to an accusation.

2. If the news report does not meet the legal requirements, the judge may order its return to the Public Prosecutor's Office, which complements it with the necessary steps, after which it draws charges or archives it if it understands that there is no contravention or transgression.

#### **Article 353. [Terms of the process and guarantees]**

1. In all cases, the acts and terms of the process are reduced to the minimum necessary for knowledge and a good decision of the case.

2. The appointment of a defendant is not mandatory and the appointment of a defense attorney is only mandatory when the crime is punishable by imprisonment or security measures or this is requested by the defendant.

#### **Article 354 [Voluntary payment to the Court]**

1. If the crime is punishable only by a fine, the defendant may, until the start of the trial hearing, request voluntary payment of the minimum fine, plus the minimum court tax.

2. If there is no voluntary payment within the specified period or if the crime is punishable by a prison sentence or security measure, the judge designates a day for trial.

#### **Article 355 [Designation of trial date]**

1. The defendant is notified of the trial date 10 days in advance, with the understanding that if he does not appear, he will be judged as if he were present and represented by a defense attorney and that he may present his defense at the hearing, even orally and request the participant's attendance at the same.

2. If it is not possible to notify the accused, the judge appoints a defender to whom notification is made, continuing the process until the end without the need for intervention by the accused.

3. The presence of the accused at the hearing is not mandatory, as long as the crime is punishable only by a fine, and he or she may be represented by a lawyer.

4. In cases where the presence of the accused is mandatory and he is absent, a new date will be assigned, and on this date, if he is absent again, he will be represented by a defense attorney and judged as if he were present.

#### **Article 356 [Witnesses]**

1. The number of witnesses for the prosecution and defense cannot exceed 3, for each crime.

2. The defendant may present witnesses up to 5 days before the date designated for the hearing or present them at the hearing by simple verbal statement, before the end of the trial.

3. If witnesses have been appointed before the trial and the accused does not undertake to present them at the hearing, the Court will notify them.

#### **Article 357. [Of the Hearing]**

1. In cases of misdemeanors and transgressions for which the only penalty is a fine, the Public Prosecutor's Office may prosecute orally and is notified of the final decision.

2. If the misdemeanor or transgression carries a prison sentence and the Public Prosecutor's Office is not present at the beginning of the hearing, the judge appoints a suitable person to replace him.

3. At the beginning of the hearing, people who have the right to appeal the sentence may request documentation of the hearing, which will be done by summary.

4. If documentation of the hearing has been requested, the accusation and response, if given orally, will be recorded in the minutes.

5. Once the evidence has been produced, the Public Prosecutor's Office and the defender are given the floor, once, who can use it for a maximum of twenty non-extendable minutes.

6. The sentence can be delivered orally and dictated to the minutes

7. The provisions of the correctional process are subsidiarily applicable to the trial, with the necessary adaptations.

#### **Article 358 [Resources]**

1. An appeal is only admissible against the sentence, the order that puts an end to the process, the order that does not receive the accusation or does not designate a date for trial.

2. The appeal is processed as an appeal in civil matters with the specialties of this Code.

## **CHAPTER XII Summary process**

#### **Article 359. [When it takes place]**

1. Those detained in flagrante delicto for a crime, transgression or misdemeanor punishable by imprisonment, the maximum limit of which does not exceed five years, under the terms of the following articles, are tried in summary proceedings.

2. The trial hearing must begin, without delay, within 48 hours, counting from the moment of arrest and must be completed, except in the cases provided for in this chapter, within the immediate five days.

3. If it is foreseeable that it will be impossible to respect the deadlines set out in the previous paragraph, or if it is a matter that is not compatible with the summary form due to its complexity, the court will send the report referred to in the following article to the Public Prosecutor's Office for preparatory instruction purposes.

### **Article 360 [Procedures of the summary process]**

1. The authority or agent of authority, who carries out the arrest or to whom the prisoner is handed over, will verbally notify, in that act, the witnesses of the occurrence, no more than three in number, to appear in the respective court at the time that he will immediately indicate to them. , and will inform the defendant that he can also present defense witnesses in a number not exceeding three. If the defendant presents them at that time, the authority or agent of authority will also notify them to appear.
2. The authority or agent of authority will notify the offended party to appear, when it deems it necessary to appear.
3. If the capture takes place at times when the court is open and the fact can be immediately known, the witnesses and the offended party, when their presence is necessary, will be notified to appear in a subsequent act at the court, where the offender will be immediately brought before the respective judge.
4. If the court is not open or cannot immediately take cognizance of the fact, the authority or agent of authority will release the detainee after the report has been drawn up, warning him/her -that he must appear on the first immediate working day, at the time designated, under penalty of, if he fails to do so, incurring the crime of disobedience. The report will be sent to the court on the first immediate business day.

### **Article 361 [Postponement of the hearing]**

1. Without prejudice to maintaining the summary form, the hearing may be postponed until the 30th day after the arrest:
  - a) If the accused requests this period to prepare his defense;
  - b) If the trial lacks witnesses that the Public Prosecutor's Office, the assistant or the defendant cannot do without; or
  - c) If the court, on its own motion or at the request of the Public Prosecutor's Office, considers it necessary to carry out any evidentiary steps essential to discovering the truth and which can foreseeably be carried out within that period.
2. If the hearing is postponed, the judge warns the defendant that it will continue on the designated date, even if he does not appear, being represented by a defense attorney.

### **Article 362 [Lack of the Public Prosecutor's Office and terms of the trial]**

1. At the trial, the judge, if the representative of the Public Prosecutor's Office is not present or cannot appear justifiably, will appoint an "*ad hoc*" person, also appointing an unofficial defense, if the defendant has not appointed one.
2. He will then give the floor to the defender, to deduce the defense, which will be briefly written in the minutes, if it has not been presented in writing, after which he will interrogate the accused and the offended party, if present, the prosecution witnesses and defense, being able to ask them any questions that the representatives of the prosecution and defense require and that they deem necessary to clarify the truth.
3. Once the evidence has been presented, the representatives of the prosecution and defense will be given the floor once, who will be able to speak for a period of fifteen minutes, which the judge may extend for a longer period, if the nature of the case so permits. demand, after which the judge will hand down the sentence.
4. The offended party may be represented at the trial by a lawyer.
5. If the accused is acquitted and the offended party has been represented under the terms of the preceding paragraph, he will pay the respective court tax.

6. The sentence may be delivered verbally, recording the decision in the minutes. Procedural terms will always be reduced to the essential minimum.

#### **Article 363 [Appeals in summary proceedings]**

1. In this process, there is only an appeal, in general terms, against the final sentence or order ordering it to be archived.
2. When the prosecution or defense declare that they do not waive an appeal, the production of evidence will be reduced to writing, which must be summarized in the minutes and the writing belongs to the judge.

## **CHAPTER XIII Review and confirmation of sentence foreign criminal**

#### **Article 364 [Need for review and confirmation]**

1. When, by law or by treaty or convention, a foreign criminal sentence must be effective in São Tomé and Príncipe, its enforceability depends on prior review and confirmation.
2. At the request of the interested party, the conviction for civil compensation contained therein may be confirmed, in the same process of review and confirmation of a foreign criminal sentence.
3. The provisions of paragraph 1 are not applicable when the foreign criminal sentence is invoked in the São Tomé courts as evidence.

#### **Article 365 [Competent court]**

The Supreme Court of Justice is competent for review and confirmation, which will exercise it through an advisory judge as a single judge to be chosen by lot.

#### **Article 366 [Legitimacy]**

The Public Prosecutor's Office, the defendant, the assistant and the civil parties have the legitimacy to request the review and confirmation of a foreign criminal sentence.

#### **Article 367 [Confirmation requirements]**

1. To confirm a foreign criminal sentence, the following conditions must be met:
  - a) That, by law, treaty or convention, the sentence may have enforceable force in the territory of São Tomé and Príncipe;
  - b) That the fact that led to the conviction is also punishable by São Tomé law;
  - c) That the sentence did not impose a penalty or security measure prohibited by the law of São Tomé and people;
  - d) That the accused was assisted by a defense attorney and, when he was unaware of the language used in the process, by an interpreter;
  - e) That, unless there is a treaty or convention to the contrary, the sentence does not relate to a crime that qualifies, according to the law of São Tomé or the country in which the sentence was handed down, as a crime against the security of the State.
2. The requirements on which the civil procedure law makes the confirmation of a foreign civil sentence depend are correspondingly applicable to the confirmation of a foreign criminal sentence, in the applicable part.
3. If the foreign criminal sentence has imposed a penalty that São Tomé law does not provide for or a penalty that São Tomé law provides, but to a greater extent than the legal maximum admissible, the sentence is confirmed, but the penalty applied becomes that to the case according to São Paulo law-tomense or reduce to the appropriate limit. However, it does not prevent confirmation of the application by a foreign sentence of a sentence lower than the minimum permissible under São Tomé law.

#### **Article 368 [Exclusion of enforceability]**

If all the necessary requirements for confirmation are met, but if the criminal procedure or penalty is extinguished, according to São Tomé law, due to prescription, amnesty or any other reason, confirmation is granted, but the force enforcement of the penalties or security measures applied is denied.

#### **Article 369 [Start of execution]**

The execution of a confirmed foreign criminal sentence does not begin until the convicted person has complied with the sentences or security measures of the same nature in which he was sentenced by the Sao Tome courts, without prejudice to the need to implement any legal cumulation.

#### **Article 370 [Procedure]**

In the procedure for reviewing and confirming a foreign criminal sentence, the procedures of the civil procedure law are followed in everything that is not provided for in the special law, as well as in the previous articles and in the following paragraphs:

- a) The decision of the advisory judge as a single judge may be appealed, lodged and processed like criminal appeals, to the Full Court of the Supreme Court of Justice;
- b) The Public Prosecutor's Office always has the right to appeal.





**BOOK III**

**From Resources**

## CHAPTER I Species and Processing of Appeals

### Article 371 [Decisions that allow appeal]

It is permitted to appeal against orders, sentences or rulings, handed down by any judge or court, in criminal matters, which are not expressly excepted by law.

### Article 372 [Decisions that do not admit appeal]

There will be no appeal:

- a) Two simple file offices;
- b) Decisions on factual matters taken by the judge or court;
- c) Judgments of the Supreme Court of Justice, without prejudice to the provisions of the Base Law of the Judiciary System; d) Once

a decision has been made on a civil claim, the appeal is admissible but restricted to the claim, as long as its amount exceeds the jurisdiction provided for in civil matters;

- e) In special cases determined by law.

### Article 373 [Legitimacy and interest in acting]

1. They have the right to appeal:

- a) The Public Prosecutor's Office, of any decisions, even if in the exclusive interest of the defendant;
- b) The defendant or defendant and the assistant, of decisions made against him;
- c) The civil parties, in terms of the decisions made against each one;
- d) Those who have been ordered to pay any amounts, under the terms of this Code or are defending a right affected by the decision.

2. Anyone who is not interested in taking action cannot appeal.

3. It is mandatory for the Public Prosecutor's Office to lodge an appeal against all convictions that impose a prison sentence of more than eight years.

### Article 374 [Waiver of appeal]

1. Waiving the appeal against the final sentence, except in cases where it is not permitted by law, inhibits the prosecution and defense, respectively, from appealing any order or decision previously made in the process.

2. If the appeal has already been raised, it will have no effect, and the process will be lowered as soon as the resignation is known. If you have already been judged, the decision will not invalidate the sentence initially given.

3. The declaration made by one of the representatives of the prosecution or defense that there is no need to appeal gives all others the right to appeal.

### Article 375 [Procedures of appeals in criminal proceedings]

1. Appeals in criminal proceedings will be processed and judged in the same way as appeals in civil matters, with the specialties of this code.

2. The deadline for filing an appeal is 15 days and the request for interposition must immediately contain the respective allegations. In the absence of allegations, the judge dismisses the appeal as deserted, sentencing the appellant to pay the costs of the incident.

3. If the appeal has been lodged in the minutes of the trial, or immediately after the decision that was intended to be challenged, the said period will run from the notification of the admission of the same.  
for.

4. Once the appeal is filed and the motivation is attached, or after the deadline for this purpose has expired, the case is submitted to the judge who issues an order and, if the appeal is admitted, determines its effect and escalation regime, ordering notification of the remaining procedural subjects affected by the appeal to respond within 15 days.

5. Once the counter allegations are added or the deadline for their presentation has elapsed, the process is concluded for the judge to order the case to be sent to the Superior Court, being able, before ordering the referral, to support or repair the decision if the appeal respects the decision that does not know the finality of the object of the process.

### **Article 376 [Complaint against the order that did not admit the appeal]**

1. If the judge or court prevents the filing of any appeal, the interested party may request in writing the president of the Supreme Court of Justice, who orders admission, and may not use any other means for this purpose.

2. In the case provided for in this article, the president of the Supreme Court of Justice may, if he so wishes, hear the judge or the appealed court.

3. If the president of the Supreme Court of Justice orders the admission of the appeal, he will send the request to the judge or court being appealed with the competent order. The judge or the appealed court will immediately notify the appellant that the appeal has been admitted, and the deadlines that begin to run from the date on which the notification is made.

### **Article 377 [Increase in appeals in quarrel and correctional processes]**

In a quarrel or correctional process, appeals filed against decisions prior to the order of pronouncement or equivalent or non-pronouncement will only go up to the higher court with what is filed in this order, and appeals against subsequent decisions, preferred before the sentence or final judgment, will only be raised with the appeal filed against this decision, save for the exceptions expressly established in the law.

### **Article 378 [Resources that rise immediately]**

Any appeals filed will soon go to the higher court:

- a) Decisions that put an end to the case;
- b) Orders that do not admit any person as an accusing party or that deny the Public Prosecutor's Office legitimacy to promote criminal action;
- c) Orders ordering or maintaining the arrest of the accused;
- d) The order that does not admit the contradictory instruction;
- e) The order rejecting the request for a medical-forensic examination of the defendant suspected of mental alienation, and ordering his hospitalization in a hospital or the cessation of such hospitalization;
- f) Final decisions on exceptions;
- g) The order in which the judge does not recognize the impediment brought against him;
- h) Decisions subsequent to the final sentence or ruling.

### **Article 379. [Appeals with suspensive effect]**

1. The following have a suspensive effect on the process:

- a) Appeals filed against the sentence or final condemnatory ruling, without prejudice to the provisions of article 177;
- b) Appealing the decision on the contradictory debate, without prejudice to the provisions of article 290.

2. The effects of the contested decision are suspended:

- a) Appeals filed against decisions ordering the payment of any sums, under the terms of this code, if the appellant deposits the amount;
- b) Appeal against the order deeming the security bond breached;
- c) The appeal against the order ordering the execution of imprisonment, in case of non-payment of the fine or other non-deprivation of liberty penalty;



2. The appeal referred to in this article will be filed, processed and judged like the identical appeal in civil matters, its decision will have the same effects, and the change in jurisprudence established by the full court can only be done in the same way.

### **Article 385 [Mandatory appeal against decisions made against seats]**

The Public Prosecutor's Office will obligatorily appeal all decisions made against the jurisprudence established by the Supreme Court of Justice in a full court, always being admissible.

this feature.

### **Article 386 [Dismissal of the process]**

1. Once the final judgment is given on the appeal filed with the Supreme Court of Justice, the case will be transferred to the court where the judgment must be complied with, within 20 days, counting from the final judgment, regardless of order or promotion.

2. The court official who causes the delay in dismissal of the case will incur a fine of 10,000 to 100,000 doublings, which will be applied by the president of the respective court, ex officio or at the request of the Public Prosecutor's Office or any interested party.

## **CHAPTER II Review of sentences and orders**

### **Article 387. [Case in which review is permissible]**

A judgment that has become final and unappealable can only be reviewed:

- a) If the facts invoked therein as grounds for the conviction of a defendant are irreconcilable with those contained in another sentence and the opposition between them may result in serious doubts about the justice of the conviction;
- b) If a final judgment considers any statements, expert statements or documents that may have determined the acquittal or conviction decision to be false;
- c) If it results from a final and unappealable sentence that the acquittal or condemnatory decision was made due to fraud, bribery, corruption or malfeasance on the part of the judges or jurors;
- d) If, in the event of conviction, new facts or evidence are discovered which, in *themselves* or combined with the facts or evidence assessed in the process, constitute serious presumptions of innocence of the accused;
- e) When, through a medical-forensic examination carried out on any defendant serving a sentence and, through any other necessary measures, it is shown that his lack of mental integrity could have determined his irresponsibility for the crime for which he was convicted.

### **Article 388 [Extinction of criminal action, prescription and serving the sentence]**

A review may be requested, even if the criminal action has been terminated or the sentence has been prescribed or served.

### **Article 389 [Legitimacy for the request]**

The review of the sentence may be requested by the Public Prosecutor's Office, when there are grounds for it, and may also be requested by the convicted defendant and, when he has died, by his ascendants, descendants, spouses or equivalents, siblings or heirs. The assistant may only request a review of acquittal decisions.

### **Article 390 [Submission of application]**

The request requesting the review will be presented in the court where the sentence that must be reviewed was handed down, it must immediately indicate the evidence offered and be accompanied by the documents that may be attached.

#### **Article 391. [Documents must be enclosed]**

1. If the review is requested based on subparagraphs a), b) and c) of article 387, the request must be accompanied by the certificate of the sentence on which the review is based and its final and unappealable status, without which it will not be received.
2. In the cases referred to in this article, only documentary evidence may be produced.

#### **Article 392. [Production of evidence on new facts or evidence]**

1. If the basis of the review is that of paragraph d) of article 387 and if they have offered witnesses or requested examinations or any other steps, the judge will interrogate the witnesses, reducing their statements to writing, and will order the proceedings to be carried out. other steps, if deemed essential for discovering the truth.
2. The applicant may only indicate new witnesses when he can justify that he was unaware of their existence at the time of the decision, or that they were unable to testify, and he may not exceed the number of those he was permitted to present at the trial hearing.
3. The judge may, ex officio or at the request of the Public Prosecutor's Office, the accusing party or the accused who have not requested the review, take any other steps he deems essential to clarify the case.

#### **Article 393. [Production of evidence regarding the convict's lack of mental integrity]**

If the review is requested based on paragraph e) of article 387, the judge may order medical-forensic examinations and other measures that he deems necessary, before proceeding with the request for review.

#### **Article 394 [Processing by attachment]**

The review will be processed by attaching it to the files where the decision to be reviewed was made.

#### **Article 395 [Processing by the judge of the case]**

1. The judge who receives the request for review will forward the file in which it is requested, within 5 days, to the president of the Supreme Court of Justice, with his information.
2. When any steps have to be taken, under the terms of the previous articles, the period referred to in this article will begin to run as soon as they have ended.

#### **Article 396 [Procedure in the Supreme Court]**

1. Once the case is received at the Supreme Court of Justice, it will be sent to the Public Ministry and then to all judges in the criminal section, for a period of 5 days. The full Supreme Court of Justice will then decide on the review.
2. If the court considers that it is essential, in the cases referred to in paragraphs d) and e) of article 387, to take any steps to clarify the truth, it may order it, ex officio or at the request of the Public Prosecutor's Office.
3. If any steps are to be taken, under the terms of the previous paragraph, the case will be sent back to the Supreme Court of Justice, after completion, and the respective criminal section will deliberate immediately, without the need for new visas.

#### **Article 397 [Authorization of review]**

If the review is authorized, the Supreme Court of Justice will order the file to be downloaded to the court in which the decision to be reviewed was preferred.

#### **Article 398. [Authorization of review and execution of the sentence]**

1. If a review of a conviction is authorized and the convict is serving a prison sentence, the Supreme Court of Justice will determine whether or not he should immediately enter the preventive detention regime, and may, when there are serious presumptions of his innocence, auto- order that he be released with or without bail.

2. When the convict has not yet served the sentence he was sentenced to and has been granted review, the conviction will not be executed, but, if the sentence imposed is imprisonment, the Supreme Court of Justice will determine whether he should await the new trial in preventive detention or on provisional release, with or without bail; If you have been sentenced to any other penalty, your release will be ordered, with or without bail.

### **Article 399 [Annulment of irreconcilable criminal sentences]**

1. If the review is authorized, based on paragraph a) of article 387, because there are irreconcilable criminal sentences that have convicted different defendants for the same facts, the Supreme Court of Justice will annul them, ordering that a new joint trial of all accused in the court that, according to the law, is competent to carry it out and that will be indicated in the ruling authorizing the review.

2. For the purposes of this article, the respective processes will be joined, following the subsequent terms of the review in any of them.

### **Article 400 [Denial of review]**

If the Supreme Court of Justice denies the review requested by the defendant or assistant, it will sentence the applicant to the respective court tax and, if there was bad faith, a fine of 250,000 to 2,500,000 dobra.

### **Article 401. [Preliminary measures for the new trial]**

1. If the review is authorized, the judge, as soon as he downloads the file that must be reviewed, will order it to be seen by the Public Prosecutor's Office to, within 5 days, declare whether he has any action to request and what. For the same purpose, the assistant and the defendant will be notified.

2. If the judge understands that the required steps are unnecessary to discover the truth, he will declare so in a reasoned order, rejecting the request.

3. At the end of the period referred to in this article, the judge will order, within three days, the required measures and any other measures that he deems absolutely necessary to clarify the case.





**BOOK IV**

# Special Processes

## CHAPTER I Absentee processes

### Article 402 [Absentee process]

Defendants accused of any criminal crime, whose proceedings cannot continue because they cannot be found or have failed to attend any event in which their appearance is mandatory, will be prosecuted and judged in accordance with the following articles.

### Article 403 [Trial in absentia and with exemption from appearance of the accused]

1. Without prejudice to legally admissible coercive measures and after all notification attempts have been unsuccessful and, after a month has passed without the defendant appearing in court, due to the impossibility of notifying the pronouncement order or equivalent, the same will be judged in absentia, in the same process, immediately designating a day for the trial.
2. If the defendant has been notified of the order of indictment or equivalent, and does not appear unjustifiably at the trial, it will be held as if the defendant were present, as long as he has provided a form of identity and residence, being notified by notice of the trial date.

### Article 404 [Publication of notices and judgment]

1. In the cases provided for in paragraph 1 of the previous article, the trial will be announced at least 10 days in advance, by a notice posted on the court door and also by another posted on the door of the municipality of the defendant's last residence, if known.
2. The notices will indicate:
  - a) The name, status, profession and last address of the accused or any other signs necessary to identify him;
  - b) The crime of which he is accused;
  - c) The day on which the trial will take place.
3. A copy of the notice with the posting certificate will be added to the file.
4. All notifications that should be made to the accused will be made to his defender.
5. Trial procedures do not suspend the capture of the accused, if applicable. If he is arrested or appears before the day designated for trial, the further terms of the common process will follow.
6. Whenever the court deems it necessary, together with the posting of the notices referred to in this article, the judgment of the accused in default will be publicized through the various media.

### Article 405 [Procedure of the trial of defendants in default]

In the cases provided for in paragraph 1 of article 403, observing the provisions of article 404, the statements will be reduced to writing, except in the case of a transgression process. In the case of a dispute, the trial will be carried out by a single judge.

### Article 406. [Excused absence, due to impossibility of attendance]

1. If the defendant is practically unable to attend the trial hearing due to age, illness or another justifying reason, such as living in a place far from the seat of the trial court, he or she may be interrogated at home or exempt from attendance. trial, proceeding as if he were present, without prejudice, however, to a subsequent determination on his appearance, if the court deems it necessary to clarify the truth.
2. If the reason for the defendant's non-appearance is of a temporary nature, the trial will be postponed for the time deemed necessary and, after one month from the date designated for that

trial and who is again absent, the trial will proceed as if he were present, on the fixed date, and the defendant must be notified for the trial with this notice.

3. If, however, the accused is or declares himself to be in a position to appear in court, the court may, ex officio or at the request of any of the parties involved, set a new date for the trial. If the defendant is also absent on that day, even for a legitimate reason, he will be judged as if he were present.

#### **Article 407. [Absence after the start of the trial]**

Once a trial has started with the appearance of the accused, if the accused is unable to attend during the hearing, or if, taking more than one session, the accused misses, for any reason, any of these, the trial will continue or be postponed, depending on whether or not the court considers the presence of the offender unnecessary; but if, on the day designated for the second time for the continuation of the trial, the accused does not appear, although for a legitimate reason, he will be tried on that same day, as if he were present, even if he could not be notified.

#### **Article 408 [Attendance of the accused at the trial hearing]**

1. If, in any of the cases provided for in this chapter, the accused appears at the trial hearing, he will be admitted to present his defense, if he has not already done so, and to offer the evidence he deems necessary.

2. The court, after hearing the representatives of the prosecution, will decide whether the trial should continue with the evidence offered or without it, or whether the hearing should be postponed for some time in order to allow the accused to the organization of defense.

#### **Article 409. [Deadlines, in case the defendant is extradited]**

When extradition of the accused takes place, the deadlines prescribed in the previous articles for the process to follow, such as absentee cases, will begin to run from the date of the extradition request.

#### **Article 410. [New trial and value of evidence in the first trial]**

1. After the defendant appears in court or is notified, he or she may request a new trial, and may present his or her defense and list of witnesses, or appeal the decision under the terms of the following article. In both cases, the judge will apply to the defendant the coercive measures he deems appropriate in general terms, and to do so he must carry out his judicial interrogation in accordance with article 215.

2. In the second trial of the defendant who has been tried in absentia, the evidence produced in the first trial will be valid for all purposes and only that which is offered again will be produced. The prosecution or defense may, however, request the appearance of some of the witnesses who have already been heard, or of other people who have to give statements and the court may also order it ex officio.

#### **Article 411. [Publicity of the hearing and deadlines for appeal]**

1. The sentence will be read publicly at the hearing and will be notified to the defendant as soon as he is arrested or his whereabouts are known.

2. The defendant may appeal the sentence within the legal period, which starts from the notification that will be given to him/her.

3. In cases where the defendant was tried as if he were present, the sentence will pass, within the legal period, regardless of any personal notification.

#### **Article 412 [Scope of appeal brought to the higher court]**

In an appeal against the decision that has judged any defendant in absentia, the Supreme Court of Justice will hear the facts and the law and may order a new trial, if it deems it necessary.

#### **Article 413 [Execution of the sentence handed down in absentia]**

The sentence handed down in absentia against absent defendants will be immediately enforced in relation to the fine, court tax, compensation and any other amounts in which the defendant is convicted.

#### **Article 414 [Defendants arrested or bailed and defendants absent]**

1. If several defendants are jointly accused, some of whom are arrested or under bail and others have not been found, 30 days after the arrest or bail of the first, the process follows its terms against all of them.
2. Defendants who are not found will be tried in absentia, in accordance with the previous articles, and tried together with the others, if the court does not choose to proceed with the separation of cases.

#### **Article 415 [Defendants notified and defendants not notified]**

If there are several defendants in the same case, none of whom is arrested or bailed, but some have been notified of the trial date and others have not, the trial is postponed and a month passes after notification of the first, the process will continue against all of them, running without notice of those not notified, under the terms of the previous articles, and all being judged jointly.  
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#### **Article 416 [Retrial of absent co-accused]**

If, in the case of the two preceding articles, there is a new trial for defendants who have responded in absentia, only these will be retried.

## **CHAPTER II Proceedings for defamation, slander and insult rias**

#### **Article 417 [Form of process]**

Proceedings for defamation, insults and slander will follow the terms of the correctional process, with the specificities set out in this chapter.

#### **Article 418. [Proof of the truth of the imputations]**

1. If the accused wishes to prove the truth of the allegations, he will present his defense in the defense, and cannot produce more than 3 witnesses for each fact. The process will then be concluded before the judge, who, within three days, will decide whether or not that evidence is admissible, and, if so, will declare the order that designated the date for trial to be null and void, observing the provisions in the following articles.
2. When the accusation involves criminal acts, only evidence resulting from a final and unappealable conviction is admissible.
3. Once a defense has been raised under the terms of the previous paragraphs, if there is still no conviction decision for the criminal act charged, the process will be suspended for the period set out in paragraph 4 of article 3, in order to promote and decide the criminal action, proceeding oneself then in harmony with what has been decided.

#### **Article 419 [Public Prosecutor's Challenge]**

1. If proof of the charges has been admitted, the process will go to the Public Prosecutor's Office, within eight days to contest them, immediately offer a list of witnesses, which cannot exceed three for each fact, and request any other means of proof. The assistant will then be notified, if necessary, for the same purpose and within the same period.
2. If the Public Prosecutor and the assistant are jointly accused of different acts, each may offer three witnesses to each fact. If the facts are the same, the Public Ministry may offer two witnesses and the party one more, if they do not agree.  
If

if several people have been appointed as assistants and do not agree, each one may offer one more witness to each fact.

3. A copy of the defense and the list of witnesses will be delivered to the defendant within three days.

### **Article 420 [Carrying out investigations and scheduling a trial]**

The judge will then order any steps that have been requested to be carried out and, after carrying them out, he will immediately designate the day for the trial, which will take place within the immediate fifteen days, unless this is not possible due to accumulation of service.

## **CHAPTER III The procedure for infractions by Magistrates**

### **Article 421 [Participation]**

The report for any crime committed by a judge or magistrate of the Public Prosecutor's Office will be addressed to the president of the Superior Council of the Judiciary or the Public Prosecutor's Office, respectively, accompanied by all documents and with the indication of other elements of evidence.

### **Article 422 [Instruction]**

The participation will be distributed to the president of the Supreme Court of Justice in the case of a judge, or to the Attorney General of the Republic, in the case of a magistrate of the Public Ministry, who questions the indicated witnesses, presides over the examinations carried out as necessary, as well as ordering the steps it deems appropriate.

### **Article 423 [Respondent's response]**

1. Once the case has been completed and the Public Prosecutor's Office has been consulted, the investigator will inform the defendant of the facts alleged against him, ordering him to respond in writing, within a period not exceeding 15 days.
2. The accused may consult the case at the secretariat of the Supreme Court of Justice, during the period granted to him, to respond to the accusations.

### **Article 424 [Prosecution]**

Add the response to the file, or after the period designated for this purpose has elapsed, the process will be sent to the Attorney General of the Republic, to issue an order of abstention or accusation, and for the same purposes, if any, it will be notified. the assistant.

### **Article 425 [Contradictory instruction and suspension of duties]**

1. Once the accusation has been filed, the process will follow the terms of the common process with the specificities of article 9 of this Code.
2. Once the defendant has been definitively pronounced, he or she will be suspended from his duties if applicable, in the abstract, a sentence of more than five years in prison or if his maintenance in office causes social alarm or even when his maintenance is not compatible with the dignity required to perform the function.

### **Article 426 [Procedural procedures]**

The general rules of criminal procedure will apply to anything that does not contradict the provisions of the previous articles.

### **Article 427 [Urgent nature]**

The processes referred to in this chapter are urgent in nature.

**Article 428. [Offenses committed by Magistrates]**

1. If any judge or magistrate of the Public Prosecutor's Office is accused of any transgression or misdemeanor, in the event that voluntary oblation has not been verified, the respective report will be sent to the Superior Council of the Judiciary or the Public Prosecutor's Office, respectively .

2. After hearing the offender in writing, the respective Superior Council will decide whether or not there will be a contravention procedure.

3. If a contravention proceeding takes place, the case files will be distributed to one of the advisory judges of the Supreme Court of Justice, by lot, with the exception of its president, who will designate a day for trial.

4. Only in the case of a conviction will there be an appeal to the Full Court of the Supreme Court of Justice.



BOOK V

# Of Executions

## CHAPTER I General provisions

### Article 429 [Effects of criminal decisions]

1. Final and unappealable criminal decisions have enforceable force throughout the national territory and even in foreign territory, in accordance with treaties, conventions and rules of international law.
2. Absolute criminal decisions are enforceable as soon as they are handed down, and any measures restricting freedom that were applied to the defendant are considered extinct.

### Article 430 [Lack of decision or sentence and doubts about the identity of the defendant]

1. A criminal decision or sentence is not enforceable:
  - a) That does not originate from a court with criminal jurisdiction;
  - b) That does not determine the applicable penalty or measure or applies a penalty or measure that does not exist in São Tomé's criminal legislation;
  - c) That is not reduced to writing;
  - d) That condemns a person other than the person accused in the case.
2. When the person accused in the case is certain, but their identification is insufficient or inaccurate, this will be corrected in the case file, after carrying out the necessary steps.

### Article 431 [Competence of the Public Prosecutor's Office for execution]

1. The Public Prosecutor's Office is responsible for promoting the execution of sentences and security measures, as well as the execution of court taxes, compensation for debts and other amounts owed to the State.
2. The Public Prosecutor's Office is also responsible for promoting executions for the coercive payment of compensation, arbitrated by the criminal court, to the offended parties, as long as they are not represented by a lawyer.
3. The compensation obtained through execution will be delivered to the right holder at no cost to him.

### Article 432 [Court competent for enforcement]

1. Execution takes place in the case itself before the judge of the Court of First Instance in which the process took place.
2. If the case has been judged in the first instance, by the Supreme Court of Justice or if the decision has been reviewed and confirmed, the execution takes place in the court of the condemned person's domicile, unless the latter is a judicial magistrate or Public Prosecutor's Office acting there. of functions, in which case the execution takes place in the nearest court.
3. The court competent for execution is responsible for deciding issues relating to the execution of sentences and security measures and the extinction of liability, as well as the extension, payment in installments or replacement of the fine sentence for work in favor of the community. and the fulfillment of subsidiary imprisonment.
4. The application of amnesty and other clemency measures provided for by law is the responsibility of the court referred to in the previous paragraph or the court of appeal where the case is taking place.

### Article 433 [Extinction of execution]

The court competent for execution declares the sentence or security measure extinct, notifying the beneficiary with delivery of a copy and, where applicable, sending copies to prison services, social reintegration services and other institutions it determines.

## CHAPTER II Execution of sentences

### Section I of the prison

#### Article 434 [Entry into the prison]

Those sentenced to prison are admitted to the prison by order of the competent judge.

#### Article 435. [Counting of prison time]

1. When counting prison time, years, months and days are computed according to the following criteria:

- a) The imprisonment fixed in years ends on the corresponding day, within the last year, to the start of the count and, if there is no corresponding day, on the last day of the month;
  - b) Imprisonment fixed in months is counted considering each month as a period that ends on the corresponding day of the following month or, failing that, on the last day of each month;
  - c) Imprisonment fixed in days is counted considering each day as a period of twenty-four hours, without prejudice to what is provided in the following article regarding the moment of release.
2. When the prison sentence is not served continuously, the time corresponding to the interruptions is added to the day found according to the criteria in the previous paragraph.
3. The prison sentence is calculated in the process by the Public Prosecutor's Office and approved by order of the executing judge, and its half (1/2), two-thirds (2/3) and five-sixths (2/3) and five-sixths (5/6) for probation purposes.
4. The Public Prosecutor's Office sends to the penitentiary and social reintegration services, within five days after the final judgment, a certificate of the sentence that imposes a custodial sentence and the count of the sentence carried out in the process, and for this purpose they must be delivered to it by the respective certificates.

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#### Article 436 [Moment of release]

1. Release takes place in the morning of the last day of serving the sentence.
2. If the last day of serving the sentence is a Saturday, Sunday or public holiday, release may take place on the immediately preceding working day, if the length of the sentence justifies it and if there are no grounds for assistance.
3. The moment of release can be brought forward by two days, when pressing reasons for social reintegration justify it.

#### Article 437. [Assumptions and duration of probation]

1. When half of the sentence (1/2) imposed on the convict has been served, he or she may be placed on probation, for a duration equal to the prison time he or she still has to serve, but never exceeding four years, under the terms and conditions contained in article 58 et seq. of the Penal Code.
2. If conditional release is not granted halfway through the sentence, it will be obligatorily reconsidered when the defendant has served two thirds (2/3) of the sentence.
3. Without prejudice to the provisions of the previous paragraphs, the convicted person is released on parole as soon as he has served five-sixths (5/6) of the sentence.
4. The decision on parole is the responsibility of the executing judge and must take into account the circumstances set out in criminal law.
5. The granting of parole always depends on the convict's consent, and may be requested by the convict, by the Public Prosecutor's Office, by the Director of Penitentiary Services and Social Reinsertion, and must be assessed ex officio by the judge executing the sentence.

#### **Article 438. [Subjection to rules of conduct]**

1. The granting of parole may be subject to the fulfillment of duties or subordinated to rules of conduct, intended to facilitate and guarantee the convict's socialization process, namely the obligation to:

- a) Pay within a certain period of time the compensation due to the injured party or guarantee its payment by means of a suitable guarantee;
- b) Give the injured party adequate moral satisfaction;
- c) Deliver a certain amount to the State without reaching the maximum limit established for the amount of the fine; d) Not exercising certain professions or frequenting certain environments or places;
- e) Not residing in certain places or regions or not accompanying, hosting or receiving certain people;
- f) Do not attend certain associations or participate in certain meetings;
- g) Not have in their possession objects capable of facilitating the commission of crimes;
- h) Periodically appear before the court or other entities or be accompanied by a social reintegration technician.

2. The court may also, having obtained the prior consent of the convicted person, determine that he or she is subject to medical treatment or cure in an appropriate institution.

3. Probation has as executive support the individual social readaptation plan, which in addition to other duties or instrumental rules of execution, may include those listed in the previous number.

#### **Article 439. [Non-compliance with rules or duties]**

Only culpable non-compliance with the rules, duties or readaptation plan legitimizes the judge's action, in order to warn the convicted person, demand new guarantees of compliance or formulate new demands.

#### **Article 440 [Revocation and termination of probation]**

1. The revocation of parole determines the execution of the prison sentence not yet served and can only be ordered if the person convicted during the execution:

- a) Grossly or repeatedly violate the imposed duties or rules of conduct or the individual social readaptation plan; or b) Committing a crime for which he will be sentenced to a sentence of more than one year, thus revealing that the purposes of probation cannot be achieved.

2. The sentence is declared extinct, regardless of order, if, after the period of probation has elapsed, there are no reasons that could imply its revocation.

#### **Article 441 [Start of the parole process]**

1. Up to two months before the admissible date for the convict's conditional release and regardless of a request or court order, the Penitentiary and Social Reinsertion Services prepare the respective individual file for the convict, which includes:

- a) The most relevant elements relating to the convict and contained in his individual file, capable of allowing the characterization of the inmate's position in relation to the socialization process;
- b) Opinion on the granting of parole approved by the Socialization Council;
- c) Proposal from the Director of Penitentiary Services and Social Reinsertion.

2. Of its own motion or at the request of the Public Prosecutor's Office or the convicted person, the court requests any other reports, documents, information or takes steps that are relevant to the decision.

3. Up to 15 days before the admissible date for release, the executing judge goes to the prison where the convict is held and hears him, in private, about his consent to conditional release and everything else he needs. is relevant to its decision. Afterwards, the files are sent to the Public Prosecutor's Office, which issues an opinion on the granting of conditional freedom.

4. Subsequently and within the same 15-day period, the judge issues a reasoned decision on conditional release, which is notified with a copy to the convict and the Public Prosecutor's Office and a copy is sent to the Penitentiary and Social Reinsertion Services.

5. The order granting conditional release, in addition to describing the grounds for granting it, specifies the respective period of duration and the rules of conduct or other obligations to which the beneficiary is subject, with the beneficiary being notified and receiving a copy beforehand. of freed.

6. The judge's decision may be challenged by means of an appeal with a merely devolutionary effect.

### **Article 442 [Monitoring of execution by the judge and visits to the prison establishment]**

1. The executing judge is responsible for:

- a) Visit prison establishments at least monthly in order to find out how sentences are being carried out;
  - b) Listen, at the time of the visit, to the wishes of prisoners, preventive and convicted, who for this purpose are registered in a specific book, and resolve these wishes with the Director of Penitentiary Services and Social Reinsertion;
  - c) Carry out other functions assigned to him by law.
2. The executing judge may freely visit any penitentiary establishment and question any employee or inmate, and may be accompanied by a judicial officer.
3. The Director of Penitentiary Services and Social Reinsertion will provide staff when requested by the judge and necessary for the normal exercise of his powers.
4. Prisoners who are registered for the visit are heard by the judge alone or in the presence of people he determines.

## **Section II Execution of the fine sentence**

### **Article 443 [Payment period]**

1. The fine is paid after the decision that imposed it becomes final and for the amount established therein, and cannot be increased by any additional amounts.
2. The payment deadline is 15 days from notification to this effect.
3. The provisions of the previous paragraph do not apply if the payment of the fine has been deferred or authorized by the installment system.

### **Article 444 [Replacement of fine for working days]**

1. The convicted person, within the period provided for in paragraphs 2 and 3 of the previous article, may request the substitution of the fine for days of work, and the convicted person must indicate the professional and educational qualifications, the professional and family situation and the time available, as well as, if possible, mention an institution where you intend to work.
2. The court may request additional information from social reintegration services, namely about the place and hours of work and remuneration.
3. The replacement decision indicates the number of hours of work and is communicated to the convict, the social reintegration services and the entity to whom the work must be provided.
4. If the fine is not replaced by working days, the payment period is 15 days from notification of the decision.

#### **Article 445 [Non-payment of fine]**

1. Once the deadline for paying the fine or any of its installments has expired and payment has not been made, property enforcement will be carried out.
2. Once the convicted person has sufficient and unencumbered assets that the court is aware of or that it indicates within the payment period, the Public Prosecutor's Office immediately carries out the execution, which follows the terms of the execution for costs.
3. If the fine for the execution of assets is not paid, nor is it replaced by work in favor of the community, the alternative prison established in the sentence shall be executed under the terms established in the Penal Code.

### **Section III Execution of suspended sentence**

#### **Article 446. [Modification of duties, rules of conduct and other imposed obligations]**

1. The modification of the duties, rules of conduct and other obligations imposed on the convict in the sentence that decreed the suspension of the execution of the prison is decided by order, after collecting evidence of the supervening relevant circumstances or that the court only subsequently has had knowledge.
2. The order is preceded by an opinion from the Public Prosecutor's Office and a hearing of the convicted person, and also by social reintegration services if they are monitoring the suspension.

#### **Article 447. [Periodic presentation and subjection to medical treatment or cure]**

1. If periodic presentation is determined before the court, the presentations are noted in the file.
2. If a presentation is determined before another entity, the court shall make the necessary communication to that entity, and the entity in question must inform the court about the regularity of the presentations and, if applicable, the non-compliance on the part of the convicted person, with an indication for reasons known to you.
3. The convict's subjection to medical treatment or cure in an appropriate institution during the period of suspension is carried out by means of a warrant issued for that purpose by the court.
4. Those responsible for the institution inform the court of the progress and end of the treatment or cure, and may suggest measures that they consider appropriate for its success.

#### **Article 448. [Failure to comply with suspension conditions]**

1. Any authorities and services that are requested to support the convicted person in fulfilling the imposed duties, rules of conduct or other obligations shall report to the court the lack of compliance by the convicted person with these duties, rules of conduct or obligations.
2. The court decides by order, after collecting the evidence and prior to the opinion of the Public Prosecutor's Office and the hearing of the convicted person.
3. Conviction for the commission of any crime committed during the period of suspension is immediately communicated to the court competent for execution, and a copy of the sentencing decision is sent to it.
4. For the purposes of paragraph 1, the decision decreeing the imposition of duties, rules of conduct or other obligations is communicated to the authorities and services referred to therein.

### **Section IV Performing work in favor of the community and admonishment**

#### **Article 449. [Provision of work in favor of the community]**

If the defendant must be sentenced to work in favor of the community, the respective execution will be carried out in accordance with special legislation.

### **Article 450 [Admonition]**

1. The admonition is issued after the decision that applies it has become final and unappealable.
2. The admonition is issued immediately if the Public Prosecutor's Office, the accused and the assistant declare in the minutes that they renounce the filing of an appeal.
3. The court executes the admonition in such a way that it is not confused with the final address referred to in paragraph 2 of article 335.

## **Section V Execution of additional sentences**

### **Article 451 [Decision and procedures]**

1. The decision decreeing the prohibition or suspension of the exercise of a public function is communicated to the director of the service or body to which the convicted person depends.
2. The decision decreeing the prohibition or suspension of the exercise of a profession or activity that depends on a public title or authorization or approval from a public authority is communicated, depending on the case, to the professional body in which the convicted person is registered or to the competent entity for authorization or approval.
3. The court may order the seizure, for the duration of the prohibition, of documents that certify the profession or activity.
4. Electoral incapacity is communicated to the electoral registration commission where the convict is registered or must register.
5. The incapacity to exercise parental authority, guardianship, administration of assets or to be a juror is communicated to the civil registry office where the convict's birth record is drawn up.
6. In addition to the provisions of the previous paragraphs, the court orders the necessary measures to execute the additional sentence.
7. The decision enacting the prohibition of driving motorized vehicles is communicated to the entities competent to issue the respective driving license, and the fact must be noted by them in the driver's record.
8. Within 15 days of the sentence becoming final, the convicted person delivers his driving license to the court secretariat, or to any police station, which sends it to that institution, if it is not already seized at the process.
9. If the person convicted of being prohibited from driving motor vehicles does not act in accordance with the provisions of the previous paragraph, the court orders the confiscation of the driving license.
10. The driving license is retained at the court office for the period of time that the prohibition lasts, and is returned after the period of the prohibition.

## **Section VI Implementation of security measures**

### **Article 452 [Implementation rules]**

1. In addition to what is referred to in articles 111 to 122 of this Code and in the provisions of the Penal Code, the execution of security measures is governed by the rules of this section.
2. The decision ordering internment specifies the type of institution in which it must be carried out and determines, if applicable, the maximum and minimum duration of internment, as well as the periods foreseen for its review in a manner similar to that established for prison sentences.
3. The beginning and end of internment are carried out by order of the court.

### **Article 453 [Communication of the sentence]**

1. The Public Prosecutor's Office sends it to the prison and social reintegration services and to the institution where the internment takes place, within five days after the internment decision becomes final, and must expressly indicate the date calculated for reviewing the measure.

2. In the event of an appeal against the decision to apply a security measure for internment and the defendant is deprived of liberty, the Public Prosecutor's Office sends a copy of the decision to the prison services, indicating that an appeal has been filed.

#### **Article 454 [Individual inmate file]**

1. In the institution where the hospitalization takes place, an individual process is organized, in which the communications received from the court and the elements provided to it are recorded or gathered, as well as the periodic assessment reports of the effects of the treatment on the danger of the inmate.

2. Annually and whenever conditions justify it, or the court requests it, the director of the institution sends the periodic evaluation report to the process organized in that court.

#### **Article 455. [Review, extension and re-examination of hospitalization]**

1. Up to two months before the date calculated for the mandatory review of the inmate's situation or at the latter's request, the court responsible for executing the sentence orders:

a) Psychiatric or personality expertise to be carried out, whenever possible, in the establishment where the inmate is located, and the respective report must be presented within 30 days;

b) Officially or at the request of the Public Prosecutor's Office, the interned person or the defender, the steps that appear to be of interest for the decision.

2. By the same date, the social reintegration services send a report containing an analysis of the family and professional background of the interned person.

3. The mandatory review of the inmate's situation takes place with a hearing from the Public Prosecutor's Office, the defender and the inmate, and their presence can only be waived if their health condition makes the hearing useless or unfeasible.

#### **Article 456 [Applicable provisions]**

The rules relating to the execution of the prison sentence are applicable to the internment measure, with the necessary adaptations.

## **Section VII Costs and execution of assets**

#### **Article 457 [Applicable law]**

In everything that is not specifically provided for in this Code, the execution of assets is governed by the Court Costs Code and, alternatively, by the Civil Procedure Code.

#### **Article 458 [Subsidiary provisions on costs]**

The provisions of the Judicial Costs Code are subsidiarily applicable.



