

This file corresponds to part 1 of book 1 (On the subjects of the process), title 1 (On the judge and the court) of the criminal procedural code of Portugal.

Chapter I - Jurisdiction

Article 8 - Administration of criminal justice

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

Article 9 - Exercise of criminal jurisdictional function

1 - Judicial courts administer criminal justice in accordance with the 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.

Chapter II - Competence

Section I - Material and functional competence

Article 10 - Applicable provisions

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.

Article 11 - Jurisdiction of the Supreme Court of Justice

1 - In criminal matters, the plenary session of the Supreme Court of Justice has the powers assigned to it by law.

2 - The president of the Supreme Court of Justice, in criminal matters, is responsible for:

a) Be aware of conflicts of competence between sections;

b) Authorize the interception, recording and transcription of conversations or communications involving the president of the republic, the president of the assembly of the republic or the prime minister and order their destruction, in accordance with articles 187 to 190. th;

c) Perform other duties conferred by law.

3 - It is the responsibility of the full criminal sections of the Supreme Court of Justice, in criminal matters:

a) Judge the president of the republic, the president of the assembly of the republic and the prime minister for crimes committed in the exercise of their functions;

b) Judge appeals against decisions given in the first instance by the sections;

c) Standardize jurisprudence, in accordance with articles 437 et seq.

4 - The criminal sections of the Supreme Court of Justice are responsible for:

a) Judge cases for crimes committed by judges of the Supreme Court of Justice and public prosecutors who perform functions at these courts, or similar ones;

b) Judge appeals that do not fall within the jurisdiction of the full sections;

c) To hear about requests for habeas corpus due to illegal arrest;

d) Receive review requests;

e) Decide on the request for the attribution of jurisdiction to another court of the same type and hierarchy, in cases of obstruction to the exercise of jurisdiction by the competent court;

f) Perform other duties conferred by law.

5 - The sections operate with three judges.

6 - The presidents of the criminal sections of the Supreme Court of Justice, in criminal matters, are responsible for:

a) Be aware of conflicts of jurisdiction between relationships, between these and the courts of first instance or between courts of first instance of different judicial districts;

b) Perform other duties conferred by law.

7 - It is the responsibility of each judge of the criminal sections of the Supreme Court of Justice, in criminal matters, to carry out judicial acts relating to the investigation, direct the investigation, preside over the investigative debate and issue an order of indictment or non-indictment in the processes referred to in paragraph a) of paragraph 3 and in paragraph a) of paragraph 4.

Article 12 - Competence of Relations

1 - In criminal matters, the plenary of relations has the powers assigned to it by law.

2 - It is up to the presidents of the relations, in criminal matters:

a) Be aware of conflicts of competence between sections;

b) Perform other duties conferred by law.

3 - The criminal relations sections, in criminal matters, are responsible for:

a) Judge cases for crimes committed by judges, public prosecutors and deputy prosecutors;

b) Judge appeals;

c) Judge extradition judicial proceedings;

d) Judge the review and confirmation processes of foreign criminal sentences;

e) Perform other duties conferred by law.

4 - The sections operate with three judges.

5 - The presidents of the criminal relations sections, in criminal matters, are responsible for:

a) Be aware of conflicts of jurisdiction between courts of first instance in the respective judicial district;

b) Perform other duties conferred by law.

6 - Each judge of the criminal relations sections, in criminal matters, is responsible for carrying out judicial acts relating to the investigation, directing the investigation, presiding over the investigative debate and issuing an order of indictment or non-indictment in the processes referred to in subparagraph a) of no. 3.

Article 13 - Jurisdiction of the Jury Court

1 - The jury is responsible for judging cases which, if the intervention of the jury has been requested by the public prosecutor, the assistant or the accused, relate to crimes set out in title iii and chapter i of title v of book ii of the penal code and in criminal law relating to violations of international humanitarian law.

2 - The jury court is also responsible for judging cases that, although they should not be judged by a single court and the intervention of the jury has been requested by the public prosecutor, the assistant or the accused, concern crimes whose maximum penalty, abstractly applicable, is higher to eight years in prison.

3 - The public prosecutor's request and the assistant's request must be made within the deadline for filing the accusation, together with it, and the defendant's request, within the deadline for the request to open an investigation. If there is an instruction, the application of the accused and that of the assistant who did not bring charges must be made within eight days of notification of the indictment.

4 - (Revoked.)

5 - The request for jury intervention is irreversible.

Article 14 - Jurisdiction of the Collective Court

1 - The collective court, in criminal matters, is responsible for judging cases that, although they should not be judged by a jury court, concern crimes set out in title iii and in chapter i of title v of book ii of the penal code and in the related criminal law to violations of international humanitarian law.

2 - The collective court is also responsible for judging cases that, although they should not be judged by a single court, concern crimes:

a) Intentional or aggravated by the result, when the death of a person is an element; or

b) The maximum penalty, abstractly applicable, is greater than 5 years in prison even when, in the case of a combination of infractions, the maximum limit corresponding to each crime is lower.

Article 15 - Determination of the applicable penalty

For the purposes of the provisions of articles 13 and 14, when determining the abstractly applicable penalty, all circumstances that may increase the legal maximum penalty to be applied in the process are taken into account.

Article 16 - Jurisdiction of the Single Court

1 - The single court, in criminal matters, is responsible for judging cases that, by law, do not fall within the jurisdiction of courts of another type.

2 - It is also the responsibility of the single court, in criminal matters, to judge cases that concern crimes:

a) Expecteds in chapter ii of title v of book ii of the penal code; or

b) The maximum penalty, abstractly applicable, is equal to or less than five years in prison.

c) (Repealed.)

3 - It is also the responsibility of the single court to judge cases for crimes referred to in article 14, no. knowledge of the competition is supervening, understand that, in particular, a prison sentence of more than five years should not be imposed.

4 - In the case referred to in the previous paragraph, the court cannot impose a prison sentence exceeding five years.

Article 17.⁹ - Competence of the Investigating Judge

The investigating judge is responsible for carrying out the investigation, deciding on the ruling and exercising all jurisdictional functions until the case is sent for trial, under the terms prescribed in this code.

Article 18 - Sentence Execution Court

The jurisdiction of the court to execute sentences is regulated by special law.

Section II - Territorial competence

Article 19 - General rules

1 - The court in whose area the consummation took place is competent to hear a crime.

2 - In the case of a crime that includes the death of a person as an element of the type, the court in whose area the agent

acted or, in the case of omission, should have acted, has jurisdiction.

3 - To hear a crime that is consummated by successive or repeated acts, or by a single act likely to last over time, the court in whose area the last act was carried out or the consummation has ceased has jurisdiction.

4 - If the crime has not been consummated, the court in whose area the last act of execution was carried out or, in the case of preparatory acts being punishable, the last act of preparation, is competent to hear it.

Article 20 - Crime committed on board a ship or aircraft

1 - The court in the area of

the Portuguese port where the agent goes or where he disembarks is competent to hear about a crime committed on board a ship; and, if the agent does not go to Portuguese territory or does not disembark there, or is part of the crew, the court in 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 in the area where the crime was first reported is competent.

Article 21 - Crime of dubious or unknown location

1 - If the crime is related to different areas and there are doubts about the one in which the relevant element for determining territorial jurisdiction is located, the court in any of the areas is competent to hear it, preferring the one where the crime was first reported .

2 - If the location of the relevant element is unknown, the court in the area where the crime was first reported is competent.

Article 22 - Crime committed abroad

1 - If the crime is committed abroad, the court in the area where the offender was found or in his domicile is competent to hear it. When it is still not possible to determine jurisdiction, it belongs to the court in the area where the crime was first reported.

2 - If the crime is committed in part abroad, the court in the national area where the last relevant act was committed is competent to hear it, in accordance with the previous provisions.

Article 23 - Process regarding magistrate

If a person with the right to become an assistant or civil party to a magistrate is offended in a case, and the court where the magistrate performs duties should have jurisdiction over the case, under the previous provisions, The court of the same hierarchy or type with the nearest seat is competent, except in the case of the supreme court of justice.

Section III - Competence by connection

Article 24 - Connection cases

1 - Processes are connected when:

- a) The same agent has committed several crimes through the same action or omission;
- b) The same agent has committed several crimes, on the same occasion or place, some being the cause or effect of the others, or some being intended to continue or hide the others;
- c) The same crime has been committed by several agents in co-participation;
- d) Several agents have committed several crimes in collaboration, on the same occasion or place, some being the cause or effect of the others, or some intending to continue or hide the others; or
- e) Several agents have committed different crimes reciprocally on the same occasion or place.
- f) The cumulative responsibility of the perpetrator of the crime and the legal person or similar entity to which the same crime is attributed is at stake.

2 - The connection only applies to cases that are simultaneously in the investigation, investigation or trial phase.

3 - The connection does not operate when it is foreseeable that it will lead to non-compliance with the maximum duration of the investigation or excessive delay of this procedural phase or the trial hearing.

Article 25 - Connection of cases within the jurisdiction of courts with headquarters in the same district

In addition to the cases provided for in the previous article, there is also a connection of processes when the same agent has committed several crimes, the knowledge of which falls under the jurisdiction of courts based in the same district, in accordance with articles 19 and following.

Article 26 - Connection limits

The connection does not operate between processes that are and processes that are not within the jurisdiction of juvenile courts.

Article 27 - Material and functional competence determined by connection

If related proceedings should fall under the jurisdiction of courts of different hierarchy or type, the court of the highest hierarchy or type is competent for all.

Article 28 - Competence determined by connection

If the processes should be the responsibility of courts with jurisdiction in different areas or with headquarters in the same district, it is competent to hear them all:

- a) The court competent to hear the crime that carries the most serious penalty;
- b) In the case of crimes of equal gravity, the court to whose order the defendant is arrested or, if there are several defendants arrested, the court to which the largest number is arrested;
- c) If there are no defendants arrested or their number is equal, the court in the area where any of the crimes first became known.

Article 29 - Unity and joining of processes

- 1 - For all crimes determining a connection, in accordance with the previous provisions, a single process is organized.
- 2 - If different processes have already been initiated, as soon as the connection is recognized, all of them will be joined to the crime that determines the jurisdiction by connection.

Article 30 - Separation of processes

1 - Without prejudice to the provisions of no. 5 of article 264, on its own initiative or at the request of the public prosecutor, the accused, the assistant or the injured party, the court shall terminate the connection and order the separation of one, some or all processes whenever:

- a) The connection seriously and disproportionately affects the position of any defendant or there is a weighty and worthwhile interest of any of them in the separation, namely in not prolonging preventive detention;
- b) The connection may pose a risk to the delivery of justice in a timely manner, to the state's punitive intention or to the interest of the offended party, the assistant or the injured party;
- c) Maintaining the connection may jeopardize compliance with the maximum instruction duration deadlines or excessively delay the trial hearing;
- d) The connection may excessively delay the trial of any of the defendants; or
- e) There is a declaration of contumacy, or the trial takes place in the absence of one or some of the defendants and the court finds it more convenient to separate the cases.

2 - At the request of one or more of the defendants, the court orders the measure referred to in the previous paragraph when another or more of the defendants have requested the intervention of the jury.

3 - The application referred to in the first part of the previous paragraph takes place within eight days following notification of the order that allowed the jury to intervene.

Article 31 - Extension of competence

The competence determined by connection, under the terms of the previous articles, remains:

- a) Even if, in relation to the crime or crimes determining jurisdiction by connection, the court issues an acquittal or criminal liability is extinguished before the trial;
- b) For knowledge of the separate processes under the terms of article 30, paragraph 1.

Chapter III - Declaration of incompetence

Article 32 - Knowledge and deduction of incompetence

1 - The court's incompetence is known and declared ex officio and can be deduced by the public prosecutor, the defendant and the assistant until the final decision is final.

2 - In the case of territorial incompetence, it can only be deduced and declared:

- a) Until the beginning of the investigative debate, in the case of an investigating judge; or
- b) Until the start of the trial hearing, in the case of a trial court.

Article 33 - Effects of the declaration of incompetence

1 - Once the court has declared its incompetence, the case is referred to the competent court, which annuls the acts that would not have been carried out if the case had taken place before it and orders the repetition of the acts necessary to determine the case.

2 - The court declared incompetent carries out urgent procedural acts.

3 - Measures of coercion or property guarantee ordered by the court declared incompetent remain effective even after the declaration of incompetence, but must, as soon as possible, be validated or invalidated by the competent court.

4 - If the Portuguese courts do not have jurisdiction to deal with a crime, the case is archived.

Chapter IV - Conflicts of jurisdiction

Article 34 - Cases of conflict and their cessation

1 - There is a conflict, positive or negative, of jurisdiction when, at any stage of the process, two or more courts, of different or the same type, consider themselves competent or incompetent to hear the same crime charged to the same defendant.

2 - The conflict ceases as soon as one of the courts declares itself, even ex officio, incompetent or competent, depending on the case.

Article 35 - Reporting the conflict

1 - The court, as soon as it becomes aware of the conflict, raises it with the body competent to decide it, in accordance with articles 11 and 12, sending it a copy of the acts and all the elements necessary for its resolution, with indication of the public prosecutor, the defendant, the assistant and the respective lawyers.

2 - The conflict may also be raised by the public prosecutor, the accused or the assistant by means of a request addressed to the competent body for the resolution, containing an indication of the decisions and positions in conflict, to which the elements mentioned in the final part of the number are added. previous.

3 - The complaint or requestThe procedures provided for in the previous paragraphs do not prejudice the carrying out of urgent procedural acts.

Article 36 - Conflict resolution

1 - The body competent to resolve the conflict sends the files to the public prosecutor and notifies the procedural subjects who have not raised the conflict to, in all cases, plead within five days, after which, and after collection the information and evidence it deems necessary resolves the conflict.

2 - The decision on the conflict is irrevocable.

3 - The decision is immediately communicated to the conflicting courts and the public prosecutor's office with them and notified to the accused and the assistant.

4 - The provisions of article 33, paragraph 3, are correspondingly applicable.

Chapter V - Obstruction of the exercise of jurisdiction

Article 37 - Assumptions and effect

When, at any stage of the process subsequent to the order designating the day for the hearing, due to serious local situations capable of disturbing the development of the process:

- a) The exercise of jurisdiction by the competent court proves to be impeded or seriously hampered;
- b) There is a fear of serious danger to public security or tranquility from that exercise; or
- c) The freedom of determination of participants in the process is seriously compromised;

jurisdiction is assigned to another court of the same type and hierarchy where the obstruction is expected to not occur and which is as close as possible to the obstructed party.

Article 38 - Assessment and decision

1 - It is up to the criminal sections of the Supreme Court of Justice to decide on the request for the attribution of jurisdiction made to them by the obstructed court, the public prosecutor, the accused, the assistant or the civil parties. The request is immediately accompanied by the relevant elements for the decision.

2 - The provisions of paragraphs 1 and 3 of article 36, as well as paragraph 3 of article 33, apply with the necessary adaptations.

3 - The request for the attribution of jurisdiction does not have suspensive effect, but this may be granted, taking into account the circumstances of the case, by the court competent for the decision. In this case, the obstructed court carries out urgent procedural acts.

4 - If the request is granted, the designated court declares whether and to what extent the procedural acts already carried out remain effective or must be repeated before it.

5 - If the request of the accused, the assistant or the civil parties is considered manifestly unfounded, the applicant is ordered to pay a sum between 6 uc and 20 uc.

Chapter VI - Impediments, refusals and excuses

Article 39 - Impediments

1 - No judge may exercise his or her role in criminal proceedings:

a) When they are, or have been, the spouse or legal representative of the accused, the offended party or a person with the right to become an assistant or civil party or when they live or have lived with any of these people in conditions similar to those of the spouses;

b) When he, or his spouse, or the person who lives with him in conditions similar to those of the spouses, is an ascendant, descendant, relative up to the 3rd degree, guardian or curator, adopter or adopted of the accused, the victim or of a person with the ability to become an assistant or civil party or is similar to these up to that degree;

c) When having intervened in the process as a representative of the public prosecutor's office, criminal police body, defender, lawyer for the assistant or civil party or expert; or

d) When, in the process, he has been heard or must be heard as a witness.

2-If the judge has been offered as a witness, declare, under oath, by order in the case, whether he is aware of facts that may influence the decision of the case. If so, the impediment is verified; If not, he will no longer be a witness.

3 - Judges who are spouses, relatives or similar up to the 3rd degree or who live in conditions similar to those of the spouses cannot exercise functions, in any capacity, in the same process.

Article 40 - Impediment due to participation in proceedings

1 - No judge may intervene in a trial, appeal or request for review relating to a case in which he/she has:

- a) Coercive measure provided for in articles 200 to 202 has been applied;
- b) Chaired the instructional debate;
- c) Participated in a previous trial;

d) Delivered or participated in a previous appeal decision that ultimately determined the subject matter of the case, of an investigative decision or a decision referred to in subparagraph a), or given or participated in a decision on a previous review request.

e) Refused to archive in case of dismissal of sentence, provisional suspension or summary form due to disagreement with the proposed sanction.

2 - No judge may intervene in proceedings relating to proceedings in which he or she has participated under the terms set out in paragraphs a) or e) of the previous paragraph.

3 - No judge may intervene in a case that originated from a certificate he ordered to be extracted in another case for the crimes set out in articles 359 or 360 of the penal code.

Article 41 - Declaration of impediment and its effect

1 - The judge who has any impediment under the terms of the previous articles immediately declares it by order in the case file.

2 - A declaration of impediment may be requested by the public prosecutor or by the defendant, the assistant or the civil parties as soon as they are admitted to intervene in the process, in any state thereof; The supporting elements are attached to the application. The judge concerned issues the order within a maximum period of five days.

3 - Acts carried out by an impeded judge are null and void, unless they cannot be usefully repeated and if it is verified that they do not result in prejudice to the justice of the decision in the case.

Article 42 - Appeal

1 - The order in which the judge considers himself impeded is unappealable. The order in which he does not recognize the impediment that was opposed to him may be appealed to the next higher court.

2 - If the impeachment is opposed to a judge of the Supreme Court of Justice, the appeal is decided by the criminal section of this same court without the participation of the person concerned.

3 - The appeal has a suspensive effect, without prejudice to urgent procedural acts being carried out, even by the judge concerned, if this is indispensable.

Article 43 - Refusals and excuses

1 - A judge's intervention in the process may be refused when there is a risk of being considered suspicious, due to there being a serious and serious reason suitable for generating distrust regarding his impartiality.

2 - The intervention of the judge in another process or in previous stages of the same process outside the cases of article 40 may constitute grounds for refusal, under the terms of paragraph 1.

3 - Refusal may be requested by the public prosecutor, the accused, the assistant or the civil parties.

4 - The judge cannot voluntarily declare himself a suspect, but can ask the competent court to excuse him from intervening when the conditions of paragraphs 1 and 2 are met.

5 - Procedural acts carried out by a judge who has been refused or excused until the moment the refusal or excuse is requested are only annulled when it is found that they result in prejudice to the justice of the decision in the case; those carried out subsequently are only valid if they cannot be usefully repeated and if it is verified that they do not result in prejudice to the justice of the decision in the process.

Article 44 - Deadlines

The request for reThe objection and the request for an excuse are admissible until the beginning of the hearing, until the beginning of the appeals conference or until the beginning of the evidentiary debate. They are only admissible afterwards, until the judgment or until the evidentiary decision, when the facts invoked as grounds have taken place, or have been known by the claimant, after the beginning of the hearing or debate.

Article 45 - Procedure and decision

1 - The request for an objection and the request for an excuse must be submitted, together with the elements on which they are based, before:

- a) The immediately superior court;

b) The criminal section of the Supreme Court of Justice, in the case of a judge belonging to it, the former deciding without the participation of the person concerned.

2 - After the request or the request provided for in the previous paragraph has been submitted, the judge concerned shall only carry out the urgent or necessary procedural acts to ensure the continuity of the hearing.

3 - The judge concerned shall rule on the request, in writing, within five days, immediately attaching the supporting elements. 4 - If the court does not immediately reject the application or request as clearly unfounded, it shall order the necessary evidentiary procedures for the decision.

5 - The court shall have a period of 30 days, counting from the delivery of the respective application or request, to decide on the rejection or the exemption.

6 - The decision provided for in the previous paragraph is final.

7 - If the court rejects the application of the defendant, the assistant or the civil parties as clearly unfounded, it shall sentence the applicant to pay a sum of between six and twenty UCs.

Article 46 - Subsequent terms

The judge who is prevented, rejected or excused shall immediately refer the case to the judge who, in accordance with the laws on judicial organization, should replace him.

Article 47 - Extension of the impediment, refusal and excuse regime

1 - The provisions of this chapter shall apply, with the necessary adaptations, in particular those set out in the following paragraphs, to experts, interpreters and court officials.

2 - The declaration of impediment and its request, as well as the request for refusal and the request for excuse, shall be addressed to the court or investigating judge before whom the proceedings in which the incident arises are being heard and shall be assessed by them and immediately and definitively decided, without any special formalities being required.

3 - If there is no one legally able to replace the impeded, refused or excused person, the court or investigating judge shall appoint a substitute.