

This file corresponds to part 2, book 9 (On appeals), title 2 (On extraordinary appeals) of the Portuguese criminal procedure code.

Chapter I - Establishment of Jurisprudence

Article 437.^o - Basis of the Appeal

1 - When, in the field of the same legislation, the Supreme Court of Justice delivers two judgments which, in relation to the same question of law, are based on opposing solutions, an appeal may be made, to the full criminal sections, against the judgment delivered last.

2 - An appeal is also admissible, under the terms of the previous paragraph, when a court of relationship delivers a judgment that is in opposition to another, of the same or different relationship, or of the Supreme Court of Justice, and an ordinary appeal is not admissible, except if the orientation outlined in that ruling is in accordance with the jurisprudence previously established by the Supreme Court of Justice.

3 - Judgments are considered to be delivered in the field of the same legislation when, during the interval between their delivery, there has been no legislative change that interferes, directly or indirectly, in the resolution of the question of law in dispute.

4 - Only a previous judgment that has become final and unappealable can be invoked as the basis for an appeal.

5 - The appeal provided for in paragraphs 1 and 2 may be lodged by the accused, the assistant or the civil parties and is mandatory for the Public Prosecutor's Office.

Article 438 - Interposition and Effect

1 - The appeal for the establishment of jurisprudence is filed within 30 days of the last judgment being rendered final.

2 - In the application for filing the appeal, the appellant identifies the judgment with which the appealed judgment is in opposition and, if it is published, the place of publication and justifies the opposition that gives rise to the conflict of jurisprudence.

3 - The appeal to establish jurisprudence does not have a suspensive effect.

Article 439.^o - Acts of Secretariat

1 - Once the appeal has been filed, the secretariat provides the file to interested procedural subjects for the purpose of responding within 10 days and issues a certificate of the appealed judgment narratively certifying the date of submission of the request for interposition and notification or deposit of the judgment.

2 - The request to lodge the appeal and the response are registered with the certificate, and the file thus formed is presented for distribution or, if the appeal was lodged following a ruling on the relationship, sent to the Supreme Court of Justice.

3 - In the process in which the appeal was filed, a certificate of the request for interposition and the order that admitted the appeal is provided.

Article 440 - View and Preliminary Examination

1 - Received at the Supreme Court of Justice, the process goes to the Public Prosecutor's Office, for 10 days, and is then submitted to the rapporteur, for 10 days, for preliminary examination.

2 - The rapporteur may order the appellant to attach a certificate of the judgment with which the defendant is in opposition.

3 - In the preliminary examination, the rapporteur checks the admissibility and regime of the appeal and the existence of opposition between those judged.

4 - Once the examination has been carried out, the case is sent, with a draft ruling, for approval by the president and deputy judges, for 10 days, and then to the conference, in the first session that takes place.

5 - The provisions of article 418, paragraph 2, are correspondingly applicable.

Article 441 - Conference

1 - If there is a reason for inadmissibility or the court concludes that judgments have not been opposed, the appeal is rejected; If the opposition is concluded, the appeal continues.

2 - If, however, the opposition has already been recognized, the terms of the appeal are suspended until the judgment of the appeal in which the opposition was first concluded.

3 - The provisions of article 419, paragraphs 1 and 2, are correspondingly applicable.

Article 442 - Preparation of the Trial

1 - If the appeal proceeds, interested parties are notified to present their allegations in writing within 15 days.

2 - In the arguments, the interested parties formulate conclusions in which they indicate the meaning in which the jurisprudence should be established.

3 - Once the allegations are gathered, or after the deadline for their presentation has expired, the process is concluded to the rapporteur, for thirty days, and then sent, with a draft ruling, for simultaneous approval by the remaining judges, for ten days.

4 - Once the deadline for visas has expired, the president of the Supreme Court of Justice orders the process to be registered in a table.

Article 443 - Judgment

1 - The judgment is made, in conference, by the full criminal sections.

2 - The conference is chaired by the president of the Supreme Court of Justice, who directs the proceedings and breaks ties when a majority cannot be formed.

3 - The provisions of article 409 are correspondingly applicable, even if the appeal has been lodged by the Public Prosecutor's Office or the assistant, except when either of them has appealed, to the detriment of the accused, in the process in which the appealed judgment was delivered.

Article 444 - Publication of the Judgment

1 - The judgment is immediately published in the 1st series of the Diário da República and sent, by certificate, to the courts of relation for registration in a specific book.

2 - The president of the Supreme Court of Justice sends a copy of the ruling to the Ministry of Justice accompanied by the allegations of the Public Prosecutor's Office.

Article 445 - Effectiveness of the Decision

1 - Without prejudice to the provisions of article 443, no. 3, the decision that resolves the conflict is effective in the process in which the appeal was filed and in the processes whose processing has been suspended under the terms of article 441, no. 2.

2 - The Supreme Court of Justice, depending on the case, reviews the appealed decision or resends the case.

3 - The decision that resolves the conflict does not constitute mandatory jurisprudence for the judicial courts, but they must justify the divergences relating to the jurisprudence established in that decision.

Article 446 - Appeal against decision made against case law established by the Supreme Court of Justice

1 - A direct appeal is admissible to the Supreme Court of Justice against any decision given against the jurisprudence established by it, to be filed within 30 days from the final decision of the appealed decision, with the provisions of this chapter being correspondingly applicable.

2 - The appeal can be filed by the accused, the assistant or the civil parties and is mandatory for the Public Prosecutor's Office.

3 - The Supreme Court of Justice may limit itself to applying established jurisprudence, and should only review it if it considers that it is outdated.

Article 447.^o - Resources in the Interest of the Law Unit

1 - The Attorney General of the Republic may determine that an appeal be lodged to establish the jurisprudence of a decision that has become final and unappealable for more than 30 days.

2 - Whenever he has reason to believe that a set jurisprudence is outdated, the Attorney General of the Republic may lodge an appeal against the judgment that established that jurisprudence with a view to its re-examination. In the allegations, the Attorney General of the Republic immediately indicates the reasons and the sense in which previously established jurisprudence should be modified.

3 - In the cases provided for in the previous paragraphs, the decision to resolve the conflict is not effective in the process in which the appeal was filed.

Article 448 - Subsidiary Provisions

The resources provided for in this chapter apply subsidiarily the provisions regulating ordinary appeals.

Chapter II - Review

Article 449 - Grounds and Admissibility of Review

1 - The review of a final judgment is admissible when:

- a) Another final judgment has considered false evidence that was decisive for the decision;
- b) Another final judgment has proven a crime committed by a judge or juror and related to the exercise of their function in the proceedings;
- c) The facts that served as the basis for the conviction are irreconcilable with the data as proven in another judgment and the opposition results in serious doubts about the fairness of the conviction;
- d) If new facts or evidence are discovered that, in themselves or combined with those that were assessed in the proceedings, raise serious doubts about the fairness of the conviction;
- e) If it is discovered that evidence prohibited under paragraphs 1 to 3 of article 126 served as the basis for the conviction; f) The Constitutional Court declares the unconstitutionality with general binding force of a rule with content less favourable to the defendant that served as the basis for the conviction;
- g) A binding judgment of the Portuguese State, handed down by an international body, is irreconcilable with the conviction or raises serious doubts about its fairness.

2 - For the purposes of the provisions of the previous paragraph, the judgment is equivalent to a ruling that has put an end to the proceedings.

3 - Under paragraph d) of paragraph 1, a review is not admissible for the sole purpose of correcting the specific measure of the

sanction applied.

4 - The review is admissible even if the proceedings have been terminated or the sentence has expired or been served.

Article 450 - Standing

1 - The following have standing to request a review:

a) The Public Prosecutor's Office;

b) The assistant, in relation to acquittals or rulings of non-prosecution; c) The convicted person or his/her defense attorney, in relation to convictions.

2 - The following persons also have standing to request review and to continue it, when the convicted person has died: the spouse, descendants, adopted children, ascendants, adopters, relatives or relatives up to the 4th degree of the collateral line, heirs who show a legitimate interest or anyone who has received an express assignment from the convicted person.

Article 451 - Formulation of the Request

1 - The request for review is filed in the court where the sentence that is to be reviewed was handed down.

2 - The request is always motivated and contains an indication of the means of proof.

3 - The certificate of the decision for which review is requested and its finality, as well as the documents necessary to support the request, are attached to the request.

Article 452 - Procedure

The review is processed by appendix to the case file where the decision to be reviewed was handed down.

Article 453 - Production of Evidence

1 - If the basis for the review is that provided for in Article 449, paragraph 1, paragraph d), the judge shall take the steps he considers indispensable to discover the truth, ordering the statements made to be documented, by means of a written copy or by any means of full reproduction.

2 - The applicant may not indicate witnesses who were not heard in the proceedings, unless he justifies that he was unaware of their existence at the time of the decision or that they were unable to testify.

Article 454 - Information and Referral of the Case

Within eight days after the deadline for responding has expired or the steps have been completed, when applicable, the judge shall refer the case to the Supreme Court of Justice together with information on the merits of the request.

Article 455 - Proceedings at the Supreme Court of Justice

1 - Received at the Supreme Court of Justice, the process goes to the Public Prosecutor's Office for 10 days, and is then submitted to the rapporteur for a period of 15 days.

2 - With a draft ruling, the case will then be reviewed by the judges of the criminal sections for 10 days.

3 - The decision to authorize or deny the review is taken in conference by the criminal sections.

4 - If the court considers that it is necessary to take any action, it orders it, indicating the judge who should preside over it.

5 - Once the due diligence has been carried out, the court deliberates without the need for new visas.

6 - The provisions of articles 418, no. 2, and 435 are correspondingly applicable.

Article 456 - Denial of Review

If the Supreme Court of Justice denies the review requested by the assistant, the convicted person or any of the persons referred to in article 450, no. 2, it will order the applicant to pay costs and, if it considers that the request was manifestly unfounded, in payment of an amount between 6 UC and 30 UC.

Article 457 - Authorization of Review

1 - If the review is authorized, the Supreme Court of Justice sends the case back to the court with the same category and composition as the court that issued the decision to be reviewed and which is closest.

2 - If the convicted person is serving a prison sentence or internment security measure, the Supreme Court of Justice decides, depending on the seriousness of the doubt about the conviction, whether the execution should be suspended.

3 - If it orders the suspension of execution or if the convicted person has not yet started to comply with the sanction, the Supreme Court of Justice decides whether the legally permissible coercive measure should be applied to the convicted person.

Article 458 - Annulment of Irreconcilable Sentences

1 - If the review is authorized on the basis of article 449, paragraph 1, paragraph c), because there are irreconcilable criminal sentences that have convicted different defendants for the same facts, the Supreme Court of Justice annuls the sentences and determines proceed to a joint trial of all defendants, indicating the court that, according to the law, has jurisdiction.

2 - For the purposes of the provisions of the previous paragraph, the processes are joined, following the terms of the review.

3 - The annulment of sentences ceases the execution of the sanctions applied therein, but the Supreme Court of Justice decides whether coercive measures legally admissible in the case should be applied to those convicted.

Article 459 - Means of Evidence and Urgent Acts

1 - Once the case has been downloaded, the judge orders the Public Prosecutor's Office to indicate evidence and, for the same purpose, orders the notification of the accused and the assistant.

2 - The judge then carries out the necessary urgent acts, in accordance with article 320, and orders the carrying out of the required steps and any other steps he deems necessary to clarify the case.

Article 460 - New Trial

1 - Once the acts referred to in the previous article have been carried out, a day is designated for judgment, observing the terms of the respective process in all respects.

2 - If the review has been authorized on the basis of article 449, no. 1, subparagraphs a) or b), persons convicted or accused by the Public Prosecutor's Office for facts that were decisive for the decision to review.

Article 461 - Absolute Sentence in the Review Court

1 - If the revised decision was condemnatory and the reviewing court acquits the accused, that decision is annulled, the respective record is closed and the accused is returned to the legal situation prior to the conviction.

2 - The sentence that acquits the accused in the review court is posted by certificate on the door of the court in the district of his last residence and at the door of the court that handed down the conviction and published in three consecutive issues of the newspaper in the seat of the latter court or in the nearest location, if there are no newspapers there.

Article 462 - Compensation

1 - In the case referred to in the previous article, the sentence awards the defendant compensation for the damages suffered and orders the refund of the amounts relating to costs and fines that he has incurred.

2 - The compensation is paid by the State, which is subrogated to the defendant's rights against those responsible for the facts that determined the revised decision.

3 - At the request of the applicant, or when it does not have sufficient information to determine compensation, the court relegates the settlement to execution of the sentence.

Article 463 - Convicting Sentence in the Review Court

1 - If the review court concludes that the defendant has been convicted, it will apply the sanction it deems appropriate to the case, deducting the sanction it has already served.

2 - The provisions of article 409 are correspondingly applicable.

3 - If the revised decision was acquittal, but in the review court the sentence is condemnatory:

a) The defendant who has received compensation is ordered to pay it back; It is

b) The assistant will be reimbursed for any costs paid.

Article 464 - Order Review

In cases where the review of an order that has put an end to the process is admitted, under the terms of article 449, no. 2, the Supreme Court of Justice, if it grants the review, declares the order null and void and orders that the process continues.

Article 465 - Legitimacy for New Request for Review

Once the review has been denied or the revised decision upheld, there cannot be a new review on the same basis.

Article 466 - Priority of Judicial Acts

When the convict in whose favor the review was requested is imprisoned or hospitalized, the judicial acts that must be carried out are preferred to any other service.