

This section of the file corresponds to part 2, book 7 (Of the trial), title 3 (Of the preliminary acts) of the criminal procedural code of Portugal.

#### Article 311 - Process Sanitation

1 - Once the case is received at the court, the president issues a ruling on nullities and other prior or incidental issues that impede the assessment of the merits of the case, which he can immediately become aware of.

2 - If the case has been referred for trial without instruction being given, the president orders:

a) To reject the accusation, if considered to be manifestly unfounded;

b) Not accepting the accusation made by the assistant or the public prosecutor insofar as it represents a substantial change in the facts, in accordance with paragraph 1 of article 284 and paragraph 4 of article 285, respectively .

3 - For the purposes of the provisions of the previous paragraph, the accusation is considered manifestly unfounded:

a) When it does not contain the identification of the accused;

b) When it does not contain a narration of the facts;

c) If it does not indicate the applicable legal provisions or the evidence that supports it; or

d) If the facts do not constitute a crime.

#### Article 311.<sup>o</sup>-A - Order to Present a Reply

1 - Once the issues referred to in the previous article have been resolved, the president orders, by order, the notification of the accused to contest.

2 - The order contains, under penalty of nullity:

a) Indication of the applicable facts and legal provisions, which may be done by reference to the accusation or to the ruling, if any;

b) Copy of the indictment or indictment;

c) The appointment of a defender for the accused, if not already appointed in the process; It is

d) The date and signature of the president.

3 - The order is also notified to the defender.

4 - Notification of the accused takes place in accordance with subparagraphs a) and b) of paragraph 1 of article 113, except when he has indicated his residence or professional domicile to the police or judicial authority that prepares the report or who hears it during the investigation or investigation and has never communicated the change to it by registered letter, in which case the notification is made by simple post, in accordance with subparagraph c) of paragraph 1 of article 113.

5 - There is no appeal against the order referred to in paragraph 1.

#### Article 311.<sup>o</sup>-B - Contestation and List of Witnesses

1 - The defendant, within 20 days of notification of the order referred to in the previous article, presents, if desired, the defense, accompanied by the list of witnesses, with the provisions of paragraph 14 of article 113 being applicable.

2 - The objection is not subject to special formalities.

3 - Together with the list of witnesses, the accused indicates the experts and technical consultants who must be notified for the hearing, as well as any other evidence that he deems appropriate for his defense.

4 - The provisions of paragraph e) of paragraph 3 and paragraphs 7 and 8 of article 283 apply to the list of witnesses.

#### Article 312.<sup>o</sup> - Hearing Date

1 - After the deadline set out in the previous article has expired, the president orders the date, time and place for the hearing, which will be set for the earliest date possible, so that no more time elapses between it and the day on which the files are received. two months.

2 - In the order referred to in the previous paragraph, a date is also designated for the hearing to be held in case of postponement under the terms of article 333, no. 1, or for the defendant to be heard at the request of his/her lawyer or defender appointed under article 333(3).

3 - Whenever the defendant is in preventive detention or is required to remain in the home, the date of the hearing shall take precedence over any other trial.

4 - The court shall set the date of the hearing so that there is no overlap with other judicial acts to which the lawyers or defense attorneys are required to attend, applying the provisions of article 151 of the code of civil procedure.

#### Article 313 - Notification of the Order Designating the Day for the Hearing

1 - The order designating the day for the hearing shall be notified to the public prosecutor, the defendant and his defense attorney, the assistant, civil parties, their lawyers and representatives, at least 20 days before the date set for the hearing.

2 - The previous paragraph shall apply correspondingly to the legal person or equivalent entity accused at the address indicated under paragraph c) of no. 5 of article 196.

3 - (Repealed.)

4 - The order designating the day for the hearing shall not be appealed.

#### Article 314 - Notification to the Other Judges

1 - The ruling setting the date for the hearing shall be immediately notified, by copy, to the judges who are members of the court.

2 - Copies of the indictment or filing, the indictment of the assistant, the preliminary decision, the defendant's response, the pleadings of the civil parties and any ruling relating to coercive measures or property guarantees shall be sent to them together or as soon as possible.

3 - Whenever necessary, in particular due to the special complexity of the case or any preliminary or incidental issue raised in it, the president may, ex officio or at the request of any of the other judges, order that the case be referred to them for review for a period not exceeding eight days. In this case, the documents referred to in the previous paragraph shall not be sent to them.

#### Article 315 - Response and List of Witnesses

Repealed.

#### Article 316 - Addition or Amendment to the List of Witnesses

1 - The public prosecutor, the assistant, the defendant or the civil parties may amend the list of witnesses, including requesting questioning beyond the legal limit, in the cases provided for in paragraphs 7 and 8 of article 283, provided that the requested addition or amendment can be communicated to the others up to three days before the date set for the hearing.

2 - After the list has been presented, no new witnesses from outside the district may be offered, unless the person offering them is willing to present them at the hearing.

3 - The provisions of the previous paragraphs are correspondingly applicable to the appointment of experts and technical consultants.

#### Article 317 - Notification and Compensation of Witnesses, Experts and Technical Consultants

1 - Witnesses, experts and technical consultants indicated by those who have not undertaken to present them at the hearing shall be notified to appear, except for experts from appropriate establishments, laboratories or official services, who shall be heard by teleconference from their place of work, whenever this is technically possible, with only notification of the day and time at which they shall be heard being required.

2 - When the persons referred to in the previous paragraph are criminal police officers or public administration employees and are summoned in the exercise of their functions, the judge shall award, without requiring a request, an amount corresponding to the amounts of the per diem and travel and travel allowances that may be due in the case, which shall revert, as its own revenue, to the service where they provide their services. 3 - For the purposes of the provisions of the previous paragraph, the services in question must send the necessary information to the court within five days after the hearing.

4 - When the provisions of paragraph 2 do not apply, the judge may, upon requestment of those summoned to appear at the hearing, award them an amount, calculated according to tables approved by the Ministry of Justice, as compensation for the expenses incurred.

5 - The decision on the arbitration of the amounts referred to in the previous paragraphs and their amount cannot be appealed.

6 - The arbitrated amounts are valid as costs of the process.

7 - The secretariat, ex officio or under the direction of the president, takes all necessary steps to locate and notify the people referred to in paragraph 1, and may, whenever essential, request the collaboration of other entities.

#### Article 318 - Residents Outside the Municipality

1 - Exceptionally, the making of statements to the assistant, civil parties, witnesses, experts or technical consultants may, ex officio or upon request, not be made in person, but may be requested from the judge of another court or court, by appropriate means of communication, in accordance with article 111, if:

- a) Those people reside outside the municipality where the court or judgment in the case is located;
- b) There is no reason to believe that their presence at the hearing is essential to discovering the truth; It is
- c) There are foreseeable serious difficulties or inconveniences, functional or personal, in their travel.

2 - The request is immediately communicated to the public prosecutor's office, as well as to the representatives of the accused, the assistant and the civil parties.

3 - Whoever has requested the making of declarations informs, in the same act, which facts or circumstances they must refer to.

4 - Statements are made in compliance with the formalities established for the hearing.

5 - Statements are taken simultaneously with the trial hearing, using technological equipment that allows communication, visually and soundly, in real time.

6 - In the cases provided for in the previous paragraph, the provisions applicable to making statements at a trial hearing are observed. On the day of the inquiry, the person identifies himself before the judicial officer of the court or court where the testimony is given, but from that moment on the inquiry is carried out before the judge of the case and the representatives of the parties, using technological equipment that allows communication, through visual and audio means, in real time, without the need for intervention by

the judge at the place where the testimony is given.

7 - Outside of the cases provided for in paragraph 5, the content of the statements is reduced to the record, with those reproduced in full or by summary, as the judge determines, taking into account the available means of recording and transcription, in accordance with article 101 .<sup>9</sup>

8 - Without prejudice to the provisions of international or European instruments, the assistant, civil parties or witnesses residing abroad are questioned using technological equipment that allows communication, by visual and sound means, in real time, whenever in the place of their residence the necessary technological means exist.

#### Article 319 - Making Declarations at Home

1 - If, for reasonable reasons, the assistant, a civil party, a witness, an expert or a technical consultant are unable to attend the hearing, the president may order, ex officio or upon request, that statements be taken from them in the place where they meet, on a day and time that you will communicate to them.

2 - The provisions of paragraphs 2, 3 and 7 of the previous article are correspondingly applicable.

3 - Statements are made in compliance with the formalities established for the hearing, except with regard to publicity.

#### Article 320 - Carrying out Urgent Actions

1 - The president, official exclusively or upon request, carry out urgent acts or those whose delay may pose a danger to the acquisition or preservation of evidence, or to the discovery of the truth, namely the making of statements in the cases and to the persons referred to in articles 271 and 294th

2 - The provisions of article 318, paragraphs 2, 3, 4 and 7, are correspondingly applicable.

This section of the file corresponds to part 2, book 7 (On the trial), title 2 (On the hearing) of the Portuguese criminal procedure code.

#### Chapter I - General Provisions

##### Article 321 - Publicity of the Hearing

1 - The trial hearing is public, under penalty of irremediable nullity, except in cases where the president decides to exclude or restrict publicity.

2 - The provisions of article 87 are correspondingly applicable

3 - The decision to exclude or restrict advertising is, whenever possible, preceded by a contradictory hearing of the interested procedural subjects.

##### Article 322 - Discipline of the Hearing and Management of Work

1 - The discipline of the hearing and the direction of the proceedings are the responsibility of the president. The provisions of article 85 are correspondingly applicable

2 - Decisions regarding the discipline of the hearing and the direction of the work are taken without formalities, may be recorded in the minutes and preceded by a contradictory hearing, if the president understands that this does not jeopardize the timeliness and effectiveness of the measures to be taken .

##### Article 323 - Powers of Discipline and Management

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 production of any legally admissible statements, whenever deemed necessary to discover the truth;

c) Order the reading of documents, or investigation 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 stop acts of disruption to 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 324 - Duties of Conduct of Persons Attending the Hearing

1 - People attending the hearing must behave in such a way as not to harm the order and regularity of the proceedings, the independence of discretion and the freedom of action of the procedural participants and to respect the dignity of the place.

2 - It is the responsibility, in particular, of the people referred to in the previous paragraph:

a) Comply with the determinations regarding the discipline of the hearing;

b) Behave with composure, remaining silent, with your head uncovered and sitting;

c) Do not carry disturbing or dangerous objects, namely weapons, except, in these cases, in the case of entities in charge of court security;

d) Not express feelings or opinions, namely approval or disapproval, regarding the course of the hearing.

#### Article 325 - 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 and precautions 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 hearing room and the first to be removed from it.

3 - The accused is obliged to the same duties of conduct that, under the terms of the previous article, impose on the people who attend the hearing.

4 - If, during the hearing, the defendant fails to show due respect to the court, he is warned and, if he persists in his behavior, he is sent 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 their presence necessary.

5 - The defendant removed from the hearing room, under the terms of the previous paragraph, is considered present and is represented by the defender.

6 - The defendant's removal is valid only for the session during which he was ordered.

7 - The provisions of article 85, paragraph 3, are correspondingly applicable.

#### Article 326 - Conduct of Lawyers and Defenders

If lawyers or defenders, in their allegations or requests:

a) Depart from the respect due to the court;

b) Manifestly and abusively seek to delay or impede the normal course of work;

c) Use insulting or defamatory or unnecessarily violent or aggressive expressions; or

d) Make, or encourage comments or explanations to be made, on matters outside the process and which in no way serve to clarify it;

they are politely warned by the president of the court; and if, after being warned, they continue, the person may withdraw the word from them and, in the case of the defender, entrust the defense to another lawyer or suitable person, without prejudice to the criminal and disciplinary proceedings that may take place.

They are politely warned by the president of the court; and if, after being warned, they continue, the person may withdraw their speech, the provisions of the civil procedure law being applicable in this case.

#### Article 327 - Contradiction

1 - Incidental issues arising during the hearing are decided by the court, after hearing the procedural subjects who are interested in them.

2 - The evidence presented during the hearing is subject to the adversarial principle, even if it was produced ex officio by the court.

#### Article 328 - Continuity of the Hearing

1 - The hearing is continuous, taking place without any interruption or postponement until its conclusion.

2 - Strictly necessary interruptions are admissible in the same hearing, especially for food and rest of the participants. If the hearing cannot be concluded on the day it began, it is interrupted to continue on the next business day.

3 - The postponement of the hearing is only permissible, without prejudice to the other cases provided for in this code, when, as a simple interruption is not enough to remove the obstacle:

a) A person who cannot be immediately replaced and whose presence is essential by law or court order is absent or unable to participate, except if other people are present, in which case their questioning or hearing will be carried out, even that this implies changing the order of production of evidence referred to in article 341;

b) It is absolutely necessary to produce any supervening evidence that is unavailable at the time the hearing is taking place; or

c) Any preliminary or incidental question arises, the resolution of which is essential for the good decision of the case and which makes the continuation of the hearing highly inconvenient; or d) It is necessary to prepare a social report or information on social reintegration services, in accordance with article 370, paragraph 1.

4 - If the hearing is interrupted or postponed, the hearing will resume from the last procedural act performed in the interrupted or postponed hearing.

5 - Interruption and postponement always depend on a reasoned order from the president, which is notified to all procedural subjects.

6 - Postponement cannot exceed 30 days. If it is not possible to resume the hearing within this period, due to the court's impediment or due to the impediment of the defenders appointed as a result of another judicial service already scheduled of an urgent nature and with priority over the ongoing hearing, the respective reason must be recorded in the minutes, identifying The diligence and

process to which it relates are expressly expressed.

7 - For the purposes of counting the period referred to in the previous paragraph, the period of judicial holidays is not considered, nor the period in which, for reasons beyond the control of the court, the case awaits the carrying out of evidentiary measures, the delivery of a sentence or which, upon appeal, the judgment is partially annulled, namely for repetition of the evidence or production of additional evidence.

8 - The public announcement at the hearing of the day and time for continuation or resumption of that hearing is valid as notification of the people who should consider themselves present.

#### Article 328.<sup>9</sup>-A - Principle of Full Assistance of Judges

1 - Only judges who have attended all the acts of instruction and discussion carried out at the trial hearing may intervene in the sentence, except as provided in the following paragraphs.

2 - If during the discussion and judgment by a collective court one of the assistant judges dies or becomes permanently incapacitated, the acts already carried out are not repeated, unless the circumstances advise the repetition of one or some of the acts already carried out, which is decided, in a reasoned order, by the judge who must preside over the continuation of the hearing, after hearing the substitute judge.

3 - If the impossibility is temporary, the hearing is interrupted for the necessary time, unless circumstances recommend replacing the judge who is unable to do so, which is decided, in a reasoned order, by the judge who must preside over the continuation of the hearing.

4 - The substitute judge continues to intervene, despite the return to service of the permanent judge.

5 - The judge who is transferred, promoted or retired completes the trial, except if the retirement is based on physical, moral or professional incapacity to perform the position, or if in any case the circumstances advise the replacement of the transferred judge, promoted or retired, which is decided, in a reasoned order, by the judge who must preside over the continuation of the hearing.

6 - The provisions of paragraph 2 are correspondingly applicable to the situations provided for in paragraphs 3 and 5.

7 - For the purpose of issuing the decision provided for in paragraph 2, consideration must be given to, in particular, the number of sessions already held, the number of witnesses already questioned, the possibility of repeating the evidence already produced, the date of practice of the facts and the nature of the crimes in question.

#### Chapter II - Introductory Acts

##### Article 329 - Call and Opening of the Hearing

1 - At the time when the hearing is to take place, the court clerk, in person and publicly, begins by identifying the process and then calls the people who should intervene in it.

2 - If any of the people who must intervene in the hearing are missing, the court clerk makes a new call, after which he verbally communicates to the president the list of those present and those absent.

3 - Then, the court enters the room and the president declares the hearing open.

##### Article 330 - Absence of the Public Prosecutor's Office, the Defender and the Representative of the Assistant or Civil Parties

1 - If, at the beginning of the hearing, the Public Prosecutor's Office or the defender are not present, the president shall, under penalty of irremediable nullity, replace the Public Prosecutor's Office with the legal substitute, and the defender with another lawyer or trainee lawyer, whom can grant, if so requested, some time to examine the process and prepare the intervention.

2 - In case of absence of the representative of the assistant or of the civil parties, the hearing will continue, with the absentee being allowed to intervene as soon as they appear. In the case of the absence of the assistant's representative in a procedure dependent on a private accusation, the hearing is postponed once; An unjustified absence or a second absence counts as a withdrawal from the charge, unless there is opposition from the defendant.

##### Article 331 - Lack of Assistant, Witnesses, Experts, Technical Consultants or Civil Parties

1 - Without prejudice to the provisions of article 116, the absence of an assistant, witnesses, experts or technical consultants or civil parties does not give rise to the postponement of the hearing. The assistant and the civil parties are, in this case, represented for all legal purposes by their respective appointed lawyers.

2 - If the president, ex officio or upon request, decides, by order, that the presence of any of the people mentioned in the previous paragraph is essential for the good decision of the case and it is not foreseeable that their appearance will be obtained by simply interrupting the hearing, witnesses are questioned and the assistant, experts or technical consultants or civil parties present are heard, even if this implies changing the order of production of evidence referred to in article 341.

3 - Due to the absence of the people mentioned in paragraph 1, there cannot be more than one postponement.

##### Article 332 - Presence of the Defendant

1 - The presence of the accused at the hearing is mandatory, without prejudice to the provisions of articles 333, paragraphs 1 and 2, and 334, paragraphs 1 and 2.

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 - At the reasoned request of the defendant, the court is responsible for providing the defendant with the conditions for his/her travel.

4 - The defendant who has attended the hearing cannot leave it until its end. The president takes the necessary and appropriate measures to avoid removal, including detention during interruptions of the hearing, if this seems indispensable.

5 - If, despite the provisions of the previous paragraph, the accused leaves the hearing room, the hearing may continue until the end if the accused has already been questioned and the court does not consider his presence essential, being for all purposes represented by the defender.

6 - The provisions of the previous paragraph apply correspondingly to the case in which the defendant, through intent or negligence, has placed himself in a situation of inability to continue participating in the hearing.

7 - In the cases provided for in paragraphs 5 and 6 of this article, as well as in article 325.<sup>9</sup> no. 4, the defendant returning to the hearing room is, under penalty of nullity, briefly instructed by the president of the case. passed in his absence.

8 - The provisions of articles 116, paragraphs 1 and 2, and 254, are correspondingly applicable

#### Article 333 - Absence and Judgment in the Absence of the Defendant Notified for the Hearing

1 - If the regularly notified defendant is not present at the time designated for the beginning of the hearing, the president takes the necessary and legally permissible measures to obtain his appearance, and the hearing is only postponed if the court considers that its presence from the beginning of the hearing is absolutely essential for the discovery of the material truth.

2 - If the court considers that the hearing can begin without the presence of the accused, or if the absence of the accused is caused by the impediments set out in paragraphs 2 to 4 of article 117, the hearing will not be postponed, and inquiries will be made. or after hearing the people present in the order referred to in paragraphs b) and c) of article 341, without prejudice to any changes that may be necessary to make to the list presented, and their documented statements, applying whenever necessary the provisions of no. 6 of article 117.<sup>9</sup>

3 - In the case referred to in the previous paragraph, the accused maintains the right to make statements until the end of the hearing, and if it occurs on the first scheduled date, the appointed lawyer or defender appointed to the accused may request that he be heard on the second designated date by the judge under article 312, paragraph 2.

4-The provisions of the previous paragraphs do not affect the hearing taking place in the absence of the accused with his consent, in accordance with article 334, paragraph 2.

5 - In the case provided for in paragraphs 2 and 3, if a hearing takes place in the absence of the accused, the sentence is notified to the accused as soon as he is detained or presents himself voluntarily. The deadline for the defendant to file an appeal starts from notification of the sentence.

6 - In the notification provided for in the previous paragraph, the defendant is expressly informed of the right to appeal the sentence and the respective deadline.

7 - The provisions of articles 116, paragraphs 1 and 2, and 254 and paragraphs 4 and 5 of the following article are correspondingly applicable.

#### Article 334 - Hearing in the Absence of the Defendant in Special Cases and Notice of Notice

1 - If the case requires a summary process but the procedure has been returned to the common form and if the defendant cannot be notified of the order designating the date for the hearing or misses it unjustifiably, the court may order that the hearing take place on the absence of the defendant.

2-Whenever the defendant is practically unable to attend the hearing, particularly due to age, serious illness or residence abroad, he or she may request or consent for the hearing to take place in his/her absence.

3 - In the cases provided for in paragraphs 1 and 2, if the court considers the presence of the accused to be absolutely essential, it will order it, interrupting or postponing the hearing, if necessary.

4 - Whenever the hearing takes place in the absence of the accused, he or she is represented, for all possible purposes, by the defender.

5 - In case of connection of cases, the present and absent defendants are tried together, unless the court considers the separation of cases to be more convenient.

6 - Outside of the cases provided for in paragraphs 1 and 2, the sentence is notified to the defendant who was judged absent as soon as he is detained or presents himself voluntarily. The deadline for the defendant to file an appeal starts from notification of the sentence.

7 - In the notification provided for in the previous paragraph, the defendant is expressly informed of the right to appeal the sentence and the respective deadline.

8 - The provisions of articles 116, paragraphs 1 and 2, and 254, are correspondingly applicable

#### Article 335 - Declaration of Contumacy

1 - Outside of the cases provided for in paragraphs 1 and 2 of the previous article, if, after taking the necessary steps for notification referred to in paragraph 1 and the first part of paragraph 4 of article 311- A, or the notification referred to in paragraph 1 of article 313, it is not possible to notify the defendant of the order to present a defense or the order designating the date of the hearing, or to carry out the arrest or preventive detention referred to in paragraph 2 of article 116 and in article 254, or resulting from an evasion, the defendant is notified by notices to present a defense or appear in court, within a period of up to 30 days, under penalty of being declared contumacious.

2 - The notices contain information aimed at identifying the accused, the crime he is accused of and the legal provisions that punish him and the communication that, if he fails to present himself within the signed deadline, he will be declared guilty.

3 - The declaration of contumacy is the responsibility of the president and implies the suspension of the subsequent terms of the process until the presentation or arrest of the accused, without prejudice to the provisions of paragraph 4 and the carrying out of urgent acts in accordance with article 320. th

4 - In case of connection of processes, the declaration of contumacy implies the separation of those in which it was made.

5 - The declaration of default does not prevent the continuation of the process for the purposes of declaring the loss of instruments, products and advantages in favor of the State.

6 - The previous numbers are correspondingly applicable to the defendant legal person or similar entity, with the notice being issued in accordance with paragraph 17 of article 113.

#### Article 336 - Expiration of the Declaration of Contumacy

1 - The declaration of default expires as soon as the accused appears or is detained, without prejudice to the provisions of paragraph 4 of the previous article.

2 - As soon as he appears or is detained, the accused is subject to an identity and residence order, without prejudice to other coercive measures, observing the provisions of paragraphs 2 and 4 to 6 of article 58.

3 - If the process has continued in accordance with article 283, paragraph 5, final part, the accused is notified of the accusation, and may request the opening of an investigation within the period referred to in article 287, following which and the other terms provided for the common process.

#### Article 337.<sup>a</sup> - Effects and Notification of Contumacy

1 - The declaration of contumacy implies for the defendant the immediate issuance of an arrest warrant for the purposes of the provisions of paragraph 2 of the previous article or for the application of the preventive detention measure, if applicable, and the annulment of the legal transactions of patrimonial nature concluded after the declaration.

2 - The annulment is deducted before the competent court by the Public Prosecutor's Office until the contumacy ceases.

3 - When the measure proves necessary to demotivate the situation of contumacy, the court may decree the prohibition of obtaining certain documents, certificates or registrations from public authorities, as well as the seizure, in whole or in part, of the defendant's assets.

4 - The provisions of article 228, paragraphs 2, 3, 4 and 5, are correspondingly applicable to seizure.

5 - The order declaring contumacy is announced in accordance with the final part of no. 13 of article 113 and notified, with an indication of the effects provided for in no. 1, to the defender and the relative or person trusted by the defendant.

6 - The order declaring default, specifying the respective effects, and the order declaring its cessation are registered in the default register.

#### Article 338 - Previous Questions or Incidents

1 - The court hears and decides on nullities and any other prior or incidental issues that may impede the assessment of the merits of the case on which there has not yet been a decision and which it can immediately assess.

2 - The discussion of the issues referred to in the previous paragraph must be contained within the strictly necessary time limits, not exceeding, as a rule, one hour. The decision can be given orally, with transcription in the minutes.

#### Article 339 - Introductory Exhibitions

1 - Once the introductory acts referred to in the previous articles have been carried out, the president orders the withdrawal from the room of people who must testify, being able to proceed in the same way with other people who must be heard, and makes a succinct statement about the object of the process.

2 - The president then gives the floor, in the order indicated, to the Public Prosecutor's Office, the lawyers of the assistant, the injured party and the person responsible and the defender, so that each of them can indicate, if they so wish, summarily and within a period of ten minutes, the facts you propose to prove.

3 - The president actively regulates the presentations referred to in the previous paragraph, with a view to avoiding digressions, repetitions or interruptions, as well as preventing them from becoming preliminary allegations.

4 - Without prejudice to the regime applicable to the change of facts, the discussion of the case has as its object the facts alleged by the prosecution and the defense and those resulting from the evidence produced at the hearing, as well as all relevant legal

solutions, regardless of the legal qualification of the facts resulting from the accusation or pronouncement, with a view to the purposes referred to in articles 368 and 369.

### Chapter III - Producing the Test

#### Article 340 - General Principles

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 - If the court considers it necessary to produce evidence not included in the accusation, statement or defense, it shall inform the procedural subjects as early as possible and make this known in the minutes.

3 - Without prejudice to the provisions of article 328.<sup>o</sup> no. 3, requests for evidence are rejected by order when the evidence or the respective means are legally inadmissible.

4 - Proof requests are also rejected if it is clear that:

- a) (Revoked.);
- b) The evidence required is irrelevant or superfluous;
- c) The means of proof is inadequate, impossible to obtain or very doubtful; or
- d) The request has merely dilatory purposes.

#### Article 341 - Test Production Order

The production of the test must respect the following order:

- a) Statements by the accused;
- b) Presentation of the evidence indicated by the Public Prosecutor's Office, the assistant and the injured party;
- c) Presentation of the means of evidence indicated by the accused and the person responsible.

#### Article 342 - Identification of the Defendant

1 - The president begins by asking the defendant about his name, affiliation, parish and municipality of birth, date of birth, marital status, profession, place of work and residence and, if necessary, asks him to show an official document of sufficient identification.

2 - The president warns the defendant that the lack of response to the questions asked or the falsity thereof may result in him incurring criminal liability.

3 - In the case of a legal person or similar entity being accused, the president asks its representative for its social identification and headquarters or normal location of administration, as well as, with regard to the representative, for its name, affiliation, parish and municipality of place of birth, date of birth, marital status, profession, place of work and residence and, if necessary, asks you to show an official identification document.

4 - In the case of the accused legal person or similar entity, the president warns his representative that the lack of response to the questions asked or the falsity thereof may result in him incurring criminal liability, in relation to the identification elements relating to him, and may cause the represented person to incur criminal liability, in relation to the identification elements relating to her.

#### Article 343.<sup>o</sup>- Statements by the Defendant

1 - The president informs the defendant that he has the right to make statements at any time during the hearing, as long as they refer to the object of the case, without however being obliged to do so and without his silence being to his disadvantage.

2 - If the accused is willing to make a statement, the court listens to everything he says, within the limits indicated in the previous paragraph, without expressing any opinion or making any comments from which a judgment on guilt can be inferred.

3 - If, during the statements, the defendant deviates from the object of the case, referring to matters that are irrelevant to the good decision of the case, the president warns him and, if he persists, withdraws the floor.

4 - Responding to several co-accused, the president determines whether they should be heard in each other's presence; in the case of a separate hearing, the president, once all the defendants have been heard and returned to the hearing, briefly informs them, under penalty of nullity, of what happened in his absence.

5 - The Public Prosecutor's Office, the defender, the assistant's representatives and the civil parties are not permitted to interfere in the defendant's statements, particularly suggestions regarding how to declare. However, in relation to the defender, the provisions of article 345, paragraph 1, second part, are subject to consideration.

#### Article 344 - Confession

1 - The accused may declare, at any time during the hearing, that he intends to confess the facts alleged against him, and the president must, under penalty of nullity, ask him whether he does so of his own free will and without any coercion, as well as whether proposes to make a full and unreserved confession.

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 oral arguments and, if the accused should not be acquitted for other reasons, to determining the applicable sanction; It is

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 five years.

4 - Verifying the full and unreserved confession in the cases of the previous number or the partial confession or with reservations, the court decides, in its free conviction, whether and to what extent, in relation to the facts confessed, the production of the proof.

5 - The provisions of the previous paragraphs are correspondingly applicable in proceedings against a legal person or similar entity, and their representative may make a confession of the facts that are attributed to the represented person, provided that the confession falls within their powers of representation.

#### Article 345 - Questions about Facts

1 - If the accused is willing to make a statement, each of the judges and jurors may ask him questions about the facts alleged against him and request clarifications about the statements made. The accused may, spontaneously or on the recommendation of the defender, refuse to answer some or all of the questions, without this being to his disadvantage.

2 - The Public Prosecutor's Office, the assistant's lawyer and the defender may request the president to ask the accused questions, in accordance with the previous paragraph.

3 - The defendant may be shown any people, documents or objects related to the subject of the evidence, as well as pieces prior to the process, without prejudice to the provisions of articles 356 and 357.

4 - Statements made by a co-accused to the detriment of another co-accused cannot be used as evidence when the declarant refuses to answer the questions asked under the terms of paragraphs 1 and 2.

#### Article 346.<sup>9</sup> - Declarations by the Assistant

1 - Statements may be made to the assistant, through questions posed by any of the judges and jurors or by the president, at the request of the Public Prosecutor's Office, the defender or lawyers for the civil parties or the assistant.

2 - The provisions of article 145, paragraphs 2 and 4, and paragraph 3 of the previous article are correspondingly applicable.

#### Article 347 - Declarations by Civil Parties

1 - Declarations may be made to the civilly responsible person and the injured party, through questions asked by any of the judges or jurors or by the president, at the request of the Public Prosecutor's Office, the defender or the assistant's lawyers or the civil parties.

2 - The provisions of article 145, paragraphs 2 and 4, and article 345, paragraph 3, are correspondingly applicable.

#### Article 347-A - Declarations by the Third Party Holder of Instruments, Products or Advantages That May Be Declared Lost in Favor of the State

1 - The third party to whom instruments, products or advantages that may be declared lost in favor of the State belong is guaranteed the exercise of the right to adversarial proceedings and the provision of statements, through questions asked by any of the judges or jurors or by the president, at the request of the third party itself, the Public Prosecutor's Office, the defender or the assistant's lawyers or the civil parties.

2 - The provisions of paragraphs 2 and 4 of article 145 and paragraph 3 of article 345 are correspondingly applicable

#### Article 348 - Inquiry of Witnesses

1 - The general provisions on that means of evidence are correspondingly applicable to the production of testimonial evidence at the hearing, in everything that is not contradicted by the provisions of this chapter.

2 - Witnesses are questioned, one after another, in the order in which they were indicated, unless the president, for a well-founded reason, decides otherwise.

3 - The president asks the witness about their identification, their personal, family and professional relationships with the participants and their interest in the cause, all of which are mentioned in the minutes.

4 - The witness is then questioned by the person who nominated him, and is then subjected to cross-examination. When issues not raised during direct interrogation are raised, whoever nominated the witness may re-question them on those issues, and a new cross-examination with the same scope may follow.

5 - Judges and jurors may, at any time, ask the witness any questions they deem necessary to clarify the testimony given and to make a good decision on the case.

6 - Upon authorization from the president, witnesses appointed by a co-accused may be questioned by the defender of

another co-accused.

7 - The provisions of article 345, paragraph 3, are correspondingly applicable.

#### Article 349 - Witnesses under 16

The examination of witnesses under the age of 16 is carried out only by the president. Once this is complete, the other judges, the jurors, the Public Prosecutor's Office, the defender and the assistant's and civil parties' lawyers may ask the president to ask the witness additional questions.

#### Article 350 - Declarations by Experts and Technical Consultants

1 - The statements of experts and technical consultants are taken by the president, to whom the other judges, the jurors, the Public Prosecutor's Office, the defender and the lawyers of the assistant and the civil parties may suggest any requests for clarification or questions useful for the good decision of the case. 2 - During the provision of statements, experts and consultants may, with the authorization of the president, consult notes, documents or bibliographical elements, as well as use any technical instruments they need, with the provisions of article 345 also being correspondingly applicable to them. .<sup>o</sup>, no. 3.

3 - Experts from establishments, laboratories or official services are heard via teleconference from their place of work, whenever this is technically possible, and only need to be notified of the day and time at which their hearing will take place.

#### Article 351 - Expertise on the Psychological State of the Defendant

1 - When the issue of the accused's imputability is raised at the hearing, the president, ex officio or upon request, orders the appearance of an expert to comment on the defendant's mental state.

2 - The court may also order the appearance of the expert when the question of the accused's diminished imputability is raised at the hearing.

3 - In justified cases, the court may request expertise from a specialized establishment.

4 - If the expert has not yet examined the accused or the expertise is requested from a specialized establishment, the court, for this purpose, interrupts the hearing or, if it is absolutely essential, postpones it.

#### Article 352 - Removal of the Accused During the Provision of Statements

1 - The court orders the defendant to be removed from the hearing room, during the provision of statements, if:

a) There are reasons to believe that the presence of the accused would inhibit the declarant from telling the truth;

b) The declarant is under 16 years of age and there are reasons to believe that his hearing in the presence of the accused could seriously harm him; or

c) An expert must be heard and there is reason to believe that his hearing in the presence of the accused could seriously harm his physical or mental integrity.

2 - Except in the case of paragraph c) of the previous paragraph, the provisions of article 332, paragraph 7, are correspondingly applicable.

#### Article 353 - Exemption of Witnesses and Other Declarants

1 - Witnesses, experts, assistants and civil parties may only leave the hearing location by order or with authorization from the president.

2 - Authorization is denied whenever there are reasons to believe that the presence may be useful in discovering the truth.

3 - The Public Prosecutor's Office, the defender and the lawyers of the assistant and the civil parties are heard regarding the order or authorization.

#### Article 354 - On-Site Examination

The court may, when it deems it necessary for the good decision of the case, go to the place where any fact occurred, the proof of which is essential and summon for this purpose the procedural participants whose presence it deems appropriate.

#### Article 355 - Prohibition of Valuation of Evidence

1 - Any evidence that has not been produced or examined at a hearing is not valid at trial, particularly for the purpose of forming the court's conviction.

2 - The provisions of the previous paragraph are subject to the evidence contained in procedural acts whose reading, viewing or hearing at a hearing are permitted, under the terms of the following articles.

#### Article 356 - Permitted Reproduction or Reading of Records and Declarations

1 - The following is only permitted to be read at a hearing:

a) Relating to procedural acts carried out in accordance with articles 318, 319 and 320; or

b) Instructions or investigations that do not contain statements from the accused, assistant, civil parties or witnesses.

2 - The reading of statements by the assistant, civil parties and witnesses is only permitted, having been given before the judge, in the following cases before:

a) If the declarations were made in accordance with articles 271 and 294;

b) If the Public Prosecutor's Office, the defendant and the assistant agree in their reading;

c) In the case of declarations obtained through legally permitted requests or requests.

3 - The reproduction or reading of statements previously made before the judicial authority is also permitted:

a) In the part necessary to revive the memory of anyone who declares at the hearing that they no longer remember certain facts; or

b) When there are, between them and those made at the hearing, contradictions or discrepancies.

4 - The reproduction or reading of statements made before the judicial authority is permitted if the declarants have not been able to appear due to death, supervening mental anomaly or lasting impossibility, in particular if, having exhausted the steps to ascertain their whereabouts, it has not been possible for them to notification to appear.

5 - If the assumption of paragraph 2, paragraph b, is met, the reading can take place even if they are statements made before the Public Prosecutor's Office or before criminal police bodies.

6 - It is prohibited, in any case, to read a statement given in an investigation or instruction by a witness who, at a hearing, has validly refused to testify.

7 - Criminal police bodies that have received statements whose reading is not permitted, as well as any people who, in any capacity, have participated in their collection, cannot be questioned as witnesses about their content.

8 - Viewing or listening to recordings of procedural acts is only permitted when reading the respective record in accordance with the previous paragraphs.

9 - Permission for a reading, viewing or hearing and its legal justification are stated in the minutes, under penalty of nullity.

#### Article 357 - Permitted Reproduction or Reading of Statements by the Defendant

1 - The reproduction or reading of statements previously made by the defendant in the process is only permitted:

a) Your own request and, in this case, regardless of the entity to which they were provided; or

b) When they have been made before a judicial authority with the assistance of a defense attorney and the accused has been informed under the terms and for the purposes of the provisions of paragraph b) of paragraph 4 of article 141.

2 - Statements previously made by the accused reproduced or read at a hearing do not count as a confession under the terms and for the purposes of article 344.

3 - The provisions of paragraphs 7 to 9 of the previous article are correspondingly applicable.

#### Article 358 - Non-Substantial Change to the Facts Described in the Indictment or Pronunciation

1 - If during the hearing there is a non-substantial change in the facts described in the accusation or in the statement, if any, with relevance for the decision of the case, the president, ex officio or upon request, communicates the change to the accused and grants it. him, if he so requests, the time strictly necessary to prepare the defense.

2 - The provisions of the previous paragraph are subject to the exception in the case where the change was derived from facts alleged by the defence.

3 - The provisions of paragraph 1 are correspondingly applicable when the court changes the legal classification of the facts described in the indictment or in the statement.

#### Article 359 - Substantial Change in the Facts Described in the Indictment or Pronunciation

1 - A substantial change in the facts described in the indictment or in the statement cannot be taken into account by the court for the purpose of sentencing in the ongoing case, nor does it imply the termination of the case.

2 - Communication of the change substantiates of the facts to the Public Prosecutor's Office is valid as a complaint so that it can proceed based on new facts, if these are independent in relation to the object of the case.

3 - Exceptions to the provisions of the previous paragraphs are cases in which the Public Prosecutor's Office, the accused and the assistant are in agreement with the continuation of the trial based on new facts, if these do not determine the court's incompetence.

4 - In the cases referred to in the previous paragraph, the president grants the accused, at his request, a period of time to prepare the defense not exceeding ten days, with the consequent postponement of the hearing, if necessary.

Article 360

#### - Oral Arguments

1 - Once the evidence has been produced, the president gives the floor, successively, to the Public Prosecutor's Office, the lawyers of the assistant and the civil parties and the defender, for oral arguments in which they present the conclusions, in fact and in law, that they have drawn. of the evidence produced.

2 - A reply is admissible, to be exercised only once, however, the defender, if asked 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 replies twenty minutes; The president may, however, allow anyone to continue speaking who, after the maximum legally permitted time has elapsed, so requests based on the complexity of the case.

4 - In exceptional cases, the court may order or authorize, by order, the suspension of delegations to produce 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 361 - Last Statements by the Defendant and Closing of the Discussion

1 - Once the allegations are complete, 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.

2 - The president then declares the discussion closed, without prejudice to the provisions of article 371, and the court withdraws to deliberate.

#### Chapter IV - Hearing Documentation

##### Article 362 - Minutes

The minutes of the hearing contain:

- a) The place, date and time of opening and closing of the hearing and the sessions that comprised it;
- b) The name of the judges, jurors and representative of the Public Prosecutor's Office;
- 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 321;
- f) The requests, decisions and any other indications that, by law, must be included therein;
- g) [Previous paragraph f).]

2 - The president may order that the transcription of requests and verbal protests be made only after the sentence, if he considers them to be delaying.

##### Article 363.<sup>o</sup> - Documentation of Oral Statements

Statements made orally at the hearing are always documented in the minutes, under penalty of nullity.

##### Article 364 - Form of Documentation

1 - The trial hearing is always recorded through audio or audiovisual recording, under penalty of nullity, and the beginning and end of each of the acts listed in the following number must be recorded in the minutes.

2 - In addition to statements made orally at the hearing, audio or audiovisual recording includes information, clarifications, requests and promotions, as well as the respective responses, the orders and oral arguments.

3 - (Revoked.)

4 - The secretariat transcribes requests and respective responses, orders and decisions that the judge, ex officio or upon request, determines, by non-appealable order.

5 - Transcription is made within five days, counting from the respective act; The deadline for arguing any non-compliance with the transcript is five days, counting from the notification of its incorporation into the records.

6 - The provisions of article 101 are correspondingly applicable