

This file corresponds to practical cases of the application of the criminal code and the criminal procedural code.

Having been duly notified to this effect, F made a statement before the competent criminal police body, and was then informed that an investigation was being carried out against him, as there were signs that he had committed two crimes of breach of trust (article 205^o, n°1, of the CP), being victims A (a long-time friend of his) and B (his father, but with whom he did not have a good relationship), who will have entrusted him with values, which he will have appropriated.

The necessary conditions were met for the procedure to be carried out.

During interrogation, F claims that he had not appropriated anything. In fact, he adds, the amounts in question were his and he even intended to soon file a claim to recover them.

1. What procedural condition will F assume. Legally justify

Constitution as Defendant

art. 58.^o/1, a) in connection with art. 272.^o/1 of the CPP

Formalities: communication to the individual that they should be considered a defendant from that moment on, indication and explanation of the associated rights and obligations (art. 61) and delivery of a document identifying the case, rights and duties and the defender, if one already exists - 58.^o no. 2 and 5

As the constitution was made by OPC, it is necessary to communicate it to the MP for validation within 10 days - 58.^o no. 4 and 7.

2 Subsequently, F was put on trial, the subject of which was those two crimes.

Say, taking into account the relevant principles of the process, who determined or decided that F be put on trial for the two crimes in question. Also discuss whether there would have been a chance that this case would have been resolved procedurally in another way.

Principle of officiality (principle of procedural promotion) - explanation

219th, no. 1 CRP + 48th CPP

Regarding A - art. 205.^o, no. 3 CP: criminal procedure depends on a complaint (semi-public crime)

:: having filed a complaint, the MP has the legitimacy to promote the process (49th CPP)

:: principle limitation to officialdom

Regarding B - art. 207.^o, no. 1, a) CP - the procedure depends on a private accusation as the agent is a descendant of the victim

:: 50th CPP: need to file a complaint (113th CP), appointment as assistant (68th, no. 1, a)) and deduction of private accusation (285th, no. 1)

:: exception to the principle of officiality

Principle of legality: explanation

Possible decisions

sufficient evidence has been collected (283, paragraphs 1 and 2):

:: MP must file charges (semi-public crime) - A can also file charges (art. 284.^o)

:: B filed an accusation (285.^o, no. 1 - private crime) - MP can also accuse "for the same facts, on their part or for others that do not involve a substantial change in those" (arts. 50.^o, no. 2 and 285, no. 4)

alternative:

:: provisional suspension of the process (281st): MP may order the suspension of the process, by imposing injunctions and rules of conduct, as these are 2 crimes with a prison sentence of no more than 5 years and if they occur the remaining assumptions

(archiving in case of exemption from sentence (280th): cannot be applied as it does not meet the requirement of a prison sentence of no more than 6 months, provided for in article 74 of the CP)

3 A and B intend to be reimbursed for the amounts they were expropriated. How should they proceed?

Principle of adhesion (art. 71 of the CPP). As a rule, they must file a civil compensation claim (PIC) before the criminal court, as they have legitimacy (art. 74 of the CPP). Since the criminal procedure depends on a complaint from A and a private accusation from B, there was, as an alternative, the possibility of deducting the PIC before the civil court (art. 72, no. 1, al. c) and 2 of the CPP).

4 - On the date designated for the trial hearing, F does not appear. How to proceed

F was named Defendant, therefore he has TIR and will have been notified the date of the trial hearing by simple mail - arts. 58^o, 113^o n°1 c) and 196^o/ 1, 2 and 3, c) and d) CPP

Assumptions for the absentee trial regime to be applied - art. 333rd n°1 CPP

Exception to the rule of mandatory presence of the Defendant at the trial hearing - art. 332nd CPP; art. 32nd n°6 CRP

5 - The judge, who held the trial hearing, despite the defense presented by F (which claimed that he was the owner of the assets and reiterated his willingness to propose the appropriate action to have that right recognized), comes, after all, to convict him of the two crimes in question, as he understood that there was no doubt about the assets being someone else's (and not belonging to F).

Justify the attribution of jurisdiction to judge this Court and refer to its legitimacy to render this criminal sentencing decision.

In principle, the collective court would be competent (quantitative criterion, art. 14.^o, no. 2, al. b), since we are facing a series of crimes that in the abstract could be punished with a prison sentence of up to 6 years. However, the single court could be competent to judge

this case. It must have been the MP's understanding that a prison sentence of more than 5 years should not be applied in this case (art. 16, no. 3). Therefore, the single judge cannot impose a prison sentence of more than 5 years (art. 16, no. 4). Doctrinally, the constitutionality of this possibility is discussed, with the TC having already ruled on its compliance with the CRP.

Preliminary, non-criminal question:

Sufficiency principle:

Legal matter for which the court is, from the outset, competent, as it can decide all issues relevant to criminal decision-making.

However, the Court may suspend the proceedings, allowing the preliminary question to be resolved in the normally competent court.

Suspension has a period after which the matter is resolved in the court where the criminal proceedings are taking place.

Art. 7. No. 1, 2/3, 4

A was arrested at the exact moment when, leaving another person's home, he was bringing (other people's) objects with him, it being understood that this fulfilled article 204, no. 2, al. e) of the CP.

1 A is presented to the competent entity, and the preventive detention coercive measure is subsequently applied. List the acts that were carried out and the decisions that were made and by which judicial authority.

A was presented to the investigating judge for the first interrogation - article 141 of the CPP; The coercion measure was applied to him, by decision of the investigating judge at the request of the Public Prosecutor's Office - having been heard; article 194, paragraph 4 which refers to paragraph 4 of that article.

2 A filed an appeal against the decision that applied that coercive measure to him; appeal which, however, was rejected. Some time later, it was decided to replace the measure applied with the obligation to remain in the home. What legal regulations may have served as the basis for the last decision made. Legally justify the solution

Principle of precariousness (articles 212 and 213 of the CPP); justification: timeliness and proportionality in the execution or maintenance of coercive measures.

The following may have served to support the decision:

article 212, no. 3 of the CPP - rule that applies to any coercive measure (general rule); or

Article 213, paragraph 1 mandatory quarterly review and replacement of measures (increased guarantee for custodial measures).

Judgment of Jurisprudence No. 3/96: Preventive detention must be revoked or replaced by another coercive measure as soon as circumstances justify this, in accordance with article 212 of the Code of Criminal Procedure, regardless of the re-examination quarterly of its assumptions, imposed by article 213 of the same Code.

3 In the subsequent trial, held in common form, the question arose during the hearing as to whether A had in fact entered someone else's home through a break-in or whether he had merely taken advantage of the fact that the door of the room is open to enter it illegitimately (if the answer were in the latter sense, A would have committed, not the circumstance provided for in paragraph e) of no. 2 of article 204, but only the circumstance that appears in al. f) paragraph 1 of article 204; such an understanding would have the consequence of imposing a necessarily less serious penalty on A). Having examined the evidence produced at the hearing, the collective, which made up the court, was unable to decide with certainty whether one circumstance or another existed. How should the court proceed? Legally and doctrinally justify the answer (3.5 vals).

Principle of presumption of innocence that results in in dubio pro reo in terms of evidence - 32.^o no. 2 CRP

Principle of presumption of innocence as a principle designed for the constituent elements of the legal type of crime and as a rule of judgment

In dubio pro reo principle: doubt about any circumstance that exempts or reduces the defendant's responsibility must be assessed in favor of the defendant.

In dubio pro reo principle on the issue of punishment (not just on the issue of culpability) - principle applies to all matters of fact (relating to the crime and sanction)

imposes that no distinction can be made, within the scope of the acquittal decision, between positive or doubtful decisions

Conclusion: the court must sentence for the less serious crime (f) of paragraph 1 of article 204.^o)

4 Could this case have been processed under another procedural form? Justify, indicating any hypotheses and respective conditions (1.5 vals).

At the time of arrest, article 204.^o no. 2 e) was considered fulfilled, which initially excludes special proceedings (penalty of up to 8 years).

However:

381.^o no. 2 CPP: the MP, upon arrest and at the time of presentation of the Accused, may understand that a prison sentence of more than 5 years should not be imposed and proceeds with the process in the form of a summary process

382nd CPP

391.^o A no. 2 CPP - The MP may, when processing the process, conclude that submission to an abbreviated process is justified, as he understands that a prison sentence of more than 5 years should not be imposed

This assumes that:

The evidence is simple and evident - 391.^º A no. 3

The accusation is decided within 90 days after arrest - 391.^ºB no. 2 a)

the summary process is outright dismissed, as the limit of 5 years as a maximum penalty does not provide for any exception or alternative