This file corresponds to the Subjects and Procedural Participants of Criminal Procedural Law in Portugal.

Subjects and procedural participants

Many people intervene in the criminal process and these people are designated as procedural participants. Examples: witnesses, experts, criminal police bodies, assistant's lawyer, etc. In this broader category, it is customary to highlight the more circumscribed circle of procedural subjects.

How is this subcategory distinguished within the broader category?

There is an initial understanding by Beling according to which procedural subjects would be the people who made up the triangular relationship of the process, that is, the defendant, the MP and the judge would be procedural subjects to judge. Subjects would be those without whom a criminal action would not be considered – the idea of

necessary causality.

For Figueiredo Dias, the concept of procedural subjects is broader – procedural subjects are those whose intervention in the process is not reduced to the practice of singular acts, but who rather have powers of shaping the procedural progress and co-determination of the final decision. Who would be the subjects? The judge, the defendant and the MP, but also the defendant's defender, the assistant (not the victim, but the victim who assumes a certain procedural outfit that gives him powers of intervention and shaping the march, that is, the power to indicate evidence , lodge an appeal, argue nullities, etc.) and the civil parties, although these are only procedural subjects on a formal and not material level. The civil parties are only procedural subjects at the formal level because the legal relationship that the civil parties lead is of a legal-civil nature.

While procedural participants "perform singular acts, whose procedural content is exhausted in the activity itself", procedural subjects are holders of "autonomous rights (which often appear in the form of powers-duties or public law offices) of conformation of the concrete course of the process as a whole, with a view to its final decision". In other words, they have a constitutive participation in the declaration of the law of the case. In this sense, the procedural subjects are the court (the judge), the public prosecutor, the defendant, the defender and the assistant. (Maria João Antunes)

What does it mean to say co-determine the final decision? It means that the procedural subject is given the power to indicate evidence, appeal, argue nullities that condition the outcome of the process.

In addition to participants and procedural subjects, there is a hybrid category which is the figure of the victim and which was recently autonomous (article 67-A of the CPP). The victim is not exactly a procedural subject, although he has some procedural rights, but these rights are mainly information rights and welfare protection rights and are not capable of giving the victim the power to shape the course and co-determine the final decision. The victim is a hybrid figure and is halfway between the mere procedural participant and the procedural subject.

In the adversarial system, the defendant would have to be a procedural subject (only in the inquisitorial system is the defendant seen as a mere object of the process) and the defendant is granted powers of procedural intervention, converting him or her into a subject. But our accusatory system is not a system identical to the Anglo-American accusatory system. It is not a process of parties, but a process of procedural subjects. We must avoid the expression “parties” because the Portuguese criminal process lacks the typical antagonism between accusation and defense that prevails in Anglo-Saxon systems. Reasons that dictate that our process is not one of parties:

In Portugal and other continental European countries, African countries with a European tradition and most South American countries, the Public Prosecutor's Office is not an interested party in sentencing the defendant at all costs. It is guided by duties of objectivity and legality and, therefore, its activity is carried out both in favor of the State's punitive intention and in favor of itsdefendant's screen. However, in practice, the defense of the accused provided by the MP would be nonsense. From a normative point of view, with some tradition, it must be said that this antagonism does not exist. The MP can appeal among us in the exclusive interest of the defendant (article 401.º/1, paragraph a) of the CP) and although this happens in limited cases, this is not an anomaly. As also happens in the final arguments, the MP asks for the defendant's acquittal – example: the Tancos case in relation to minister Azeredo Lopes. This reflects that the MP acts guided by duties of objectivity and legality and cannot be seen as a party exclusively interested in the defendant's conviction.

It is also not a process of parts because there is no availability between us regarding the object. A criminal case is a public matter and there is no availability on the part of either the prosecution or the defense regarding the object and that is why our system is more refractory than common law systems to consensual solutions. They are not excluded, but they are more difficult to understand in Romano-Germanic systems than in common law systems.

There is no evidentiary self-responsibility on the part of the parties in our OJ. There is a power-duty of investigation on the part of the judge and therefore there is no burden of proof on either the prosecution or the defense.

Procedural subjects - the court

In our CRP there are very clear manifestations of reservation of jurisdiction in criminal matters. Only judges can sentence criminal penalties. There can be no conviction in criminal penalties for an act of political power or an administrative act. This idea results from article 202, which establishes a monopoly of judges in the exercise of judicial function, from article 27 (in matters of application of penalties and measures restricting freedom) and from article 32/4 of the CRP, which concerns the intervention of the judge in the investigation phase when it is necessary to carry out restrictive FD acts during the investigation phase.

It is also the CRP that sets out the two main characteristics of judicial power:

Independence: Courts are independent and subject only to the law (article 203 of the CRP). Independence must be viewed from the point of view:

External – independence must be viewed from the point of view of the relationship of judicial power in relation to other powers of the State.

The courts are independent from the legislative power and therefore do not receive orders, guidance or instructions regarding specific processes.

Courts are also independent from the executive branch and therefore governments do not exercise any disciplinary function over judges. We have already heard about the prerogatives of irremovability and irresponsibility of the judge – judges cannot be held responsible for decisions that are technically incorrect. Judges can be held responsible for acts and omissions carried out in the performance of their duties, particularly when they commit crimes. This criminal and disciplinary control is not exercised over the content of decisions, but over the way decisions are made. This criminal and disciplinary responsibility is not exercised before bodies of legislative or executive power, it is assessed before the superior council of judiciary, which does not have democratic legitimacy and is made up of 17 members (article 218).

Judges must be independent from the judiciary itself, that is, judges are not bound by directions or guidelines from other judges, even from higher courts, except on appeal. On appeal, the higher court can revoke a lower court decision, but a higher court decision does not generally bind the other judges, except on appeal, and therefore the wording followed in the ruling is criticized 2/ 2013, in which it appears that the STJ is giving instructions to another judge.

Judges must also be independent in relation to groups in public life. It is inadvisable for judges to actively participate in political influence groups, very active groups of iinterests, lobbies, who are permanent actors in social media bodies. There is no prohibition, but being a regular presence and being cataloged as public figures is inadvisable because complicities and pressure are generated, and in the future the judge may be called upon to decide cases on which he has previously given his opinion in the media, or which are in relation to interest with the groups in public life in which it actively intervenes (economic life lobbies, for example) and this obviously reduces the judge's independence, in this case in relation to informal powers.

Internal – The independence of judges is also measured internally. Judges are only bound by law. Judges must be independent in relation to their own pre-compensations to the extent that they conflict with the fundamental values

of the state, with constitutional values. In his decisions, the judge must decide in accordance with the law and, as far as possible, free himself from his personal understandings that are contrary to the values

of the state.

Impartiality: Judges must be impartial – a corollary of independence. The judge is only impartial if he is independent, but impartiality requires something more: it requires the judge to present himself as a third party in relation to the people and the cause he is called upon to decide. Impartiality is ensured through two mechanisms:

Impediments – foreseen in a strict manner and which operate automatically. These are the most serious situations and, therefore, the legislator listed them in the law in a categorical manner. Once the situation described in the law has been verified, the judge must consider himself impeded without further ado. It is said that impediments are mandatory, however, we will have to take into account some situations raised by Figueiredo Dias and Nuno Brandão. In the text of these authors, it is said that the CPP standards are less guarantors of impartiality than those of the civil process, which would be nonsense, as impartiality is more important in the criminal process than in the civil process (this is if we had to graduate). It seems that the legislator at the civil level establishes lists of impediments greater than those established by the criminal legislator and that is why Figueiredo Dias and Nuno Brandão say that solutions that are not included in it and are provided for in the CPP must be included in the CPP list. article 115 of the CPC. The judge is impeded for 2 types of reasons:

Due to its relationships with other procedural actors:

This is the case of articles 39.º/1/a) and b);

The code also establishes, in relation to impediments to judges based on relationships with other people, that judges cannot intervene

in the same process if they are spouses, relatives or similar up to the 3rd degree or who live in conditions similar to those of the spouses. (article 39/3). However, there is no prohibition against someone who is married to an MP magistrate, defender, or assistant's lawyer acting as a judge. This impediment, which is enshrined in some way in article 115.º/1/al. b) of the CPC, must, in the opinion of Figueiredo Dias and Nuno Brandão, be valid in criminal proceedings. Article 39(3) should be expanded a little. Reference from article 39/3 of the CPP to article 115/1, al. d) of the CPC.

Due to the judge's previous or future intervention in that case:

This is the case of the judge's previous participation in the process, provided for in articles 39/1/al. c) and 40th. As a rule, the impediment is based on the judge's previous participation in the process. Ex: impediment from intervention as a judge of those who had already intervened as a magistrate of the MP or OPC – this impediment is linked to the principle of accusation.

But it could also be future interpretation. If the judge is appointed as a witness, he cannot simultaneously be a judge in the process. Here, the legislator was cautious. It may happen that the judge is appointed as a witness not because the judge knows something about the facts, but rather to remove the undesirable judge, who does not want to judge a certain case and, therefore,the legislator is cautious. If the judge has been offered as a witness, he is called upon to declare, under oath, by order in the case, whether he is aware of facts that could influence the decision of the case. If he states that he is aware of the facts, he is impeded and cannot be a judge in the case. If he declares that he has no knowledge, he continues to be a judge and ceases to be a witness (article 39.º/1, al. D) and no. 2).

When we said that someone who had already intervened as an OPC, MP magistrate, or even as a defender, assistant or civil party lawyer or expert could not intervene as a judge (article 39/1, paragraph c)), this is foreseen , but there is no provision for impediment of the judge who has intervened in that process as a jurisconsult (author of the case), it is only foreseen in the civil process. And, therefore, Figueiredo Dias and Nuno Brandão say that this must also be foreseen. Reference of paragraph c) of paragraph 1 of article 39 to article 115/1, al. c) of the CPC - case of jurisconsults. Figueiredo Dias and Nuno Brandão raise the issue that the CPP does not provide for the judge's impediment to decide the case in which he or she is the victim, but this situation is provided for in the CPC - the CPP does not fail to consider this hypothesis, but This hypothesis is considered in another way, saying that when the judge is offended in a criminal proceeding, that criminal proceeding cannot even take place in his district, where he exercises his functions. More than impeding that specific judge, competence is attributed to judge the district other than the one in which he performs functions. The criminal legislator considered another way, even more guarantor of impartiality (article 23 of the CPP).

In part, Figueiredo Dias and Brandão's criticism is correct, as it lacks the provision of articles 115.º/1, al. c) and 115.º/1, al. d), which must complement articles 39/1, al. c) and 39.º/3 of the CPP, but, on the other hand, they took a bad view of the situation when the judge is offended in the process. Criminal law does not establish an impediment, it establishes something even more serious.

Impeachments operate automatically – the judge must consider himself impeded without further ado when one of these circumstances occurs. The declaration of impediment can also be requested by any of the procedural subjects – the MP, the defendant, the assistant and the civil parties. If the judge declares himself impeded, his order cannot be appealed, but if the judge does not consider himself impeded, there may be an appeal to the next higher court (articles 41.º/2 and 42.º/1)

Causes of suspicion - give rise to incidents of:

Excuse;

Refusal.

There are previous interventions by the judge in the process that are grounds for impediment. But should all previous interventions generate impediment or should they, on the contrary, generate cause for suspicion that could give rise to an incident of excuse or refusal?

In the original version of the code, impediments were heavily counted. Only the judge who had previously intervened as MP, OPC (article 39/1, al. c)) and also the judge who had presided over the investigative debate, under the terms of article 40, were prevented from intervening in the process. This last impediment was still linked to the principle of accusation because following the investigative debate the judge is called upon to decide on the indictment (equivalent to indictment) or non-indictment of the accused (equivalent to archiving). His intervention in the process is not epidermal, it is an intervention that deeply penetrates the matter of the case and is equivalent in this part to that of the MP magistrate and that is why it was considered to be an impediment. But throughout the validity of the CPP, pressure increased to establish a greater list of impediments and this is what has now happened in article 40, with situations that were previously only a cause for suspicion giving rise to authentic impediments. It is worth highlighting the impediment of the judge having presided over the instructional debate (article 40, al. b)), but also the case of the judge having applied the coercive measure provided for in the articles200.º to 202.º of the CPP (article 40.º/paragraph a)). What coercive measures are these? These are more serious coercive measures – prohibition and imposition of conduct, obligation to remain in housing and preventive detention. What these serious coercive measures have in common that justifies the provision of an impediment when applied by a judge is the fact that they require the verification of strong evidence of the commission of a crime in order to be applied. When other coercive measures are applied, this does not justify impediment. A judge who has been convinced that there is strong evidence of the commission of a crime

will probably not be equidistant in the judgment and will be conditioned by this previous conviction that he has formed.
You should also pay attention to article 40/al. e) – the judge who refuses to dismiss the sentence, provisional suspension or summary form because he disagrees with the proposed sanction, is also prevented from intervening in the trial afterwards. Imagine that the MP ordered the case to be dismissed due to the dismissal of the sentence, he needs the agreement of the judge, the JIC. The judge who was asked for agreement and did not agree later cannot judge the case, and the same happens in the provisional suspension of the process and in the summary process. Outside of these interventions, the fact that the judge intervened in the investigation phase does not prevent him from intervening in the trial phase, but it may be a cause for suspicion. The judge who authorizes home searches, telephone tapping, or who applies a coercive measure other than one of those mentioned above is not prevented from intervening in the procedure, but this may be a cause for suspicion. The causes of suspicion are provided for in the CPP through a general clause in article 43/1. It is not necessary, for the clause to be fulfilled, that the judge's impartiality be effectively called into question, it is enough that there is serious/serious reason from the community's point of view to doubt the judge's impartiality. The appearance of impartiality is a condition of the value of impartiality itself. It is not enough to be impartial, you must appear impartial. In paragraph 2 of article 43, it is said that the judge's interventions in another case or in previous stages of the same case, outside the cases of article 40, may be a cause for suspicion. The courts have, however, interpreted this general clause in a very restrained/parsimonious way, dismissing many of the incidents of excuses and refusals submitted to it as unfounded.
What specifically is needed for an incident of excuse and refusal to be judged valid? Figueiredo Dias and Nuno Brandão say that the criteria are individual and objective. It is necessary to verify that that particular judge has some predisposition against or in favor of the defendant (individual), but it is also an objective criterion because it is necessary to verify if there is any justifying reason/reason to explain why this predisposition occurs. In practice, when have they been judged valid?
When there is a friendly relationship between the judge and the procedural subject;
Cases in which the judge has intervened as a judge in a case in which a related matter has been discussed;
When there is a relationship of enmity between the judge and the procedural subjects;
When the judge has previously made public statements about that case.
The causes of suspicion are not exhaustive (there is a general clause) nor do they operate automatically. The judge cannot declare himself a suspect. The judge may request an excuse from the immediately higher court and any of the legitimate procedural subjects may request the judge's refusal. The decision is always made by the next higher court, and not by the judge himself, whose impartiality must be conditioned (article 45 of the CPP). The decision made by the higher court is irrevocable (article 45/6 of the CPP).
Problem of division of jurisdiction of criminal courts
The fundamental principle regarding the jurisdiction of criminal courts is called the principle of natural or legal judge, which is enshrined in article 32/9 of the CRP. This principle has not always existed, it is not inscribed in the nature of things. In absolutist states, the power to judge was the king's prerogative and the king delegated this competence to judge to the judges and as it was his prerogative, the king could at any time raise the case or transfer jurisdiction from one court to another court. With the French revolution and the enshrinement of the principle of separation of powers, things changed and most legal systems enshrine this principle.
The core of this principle translates into the prohibition of removing a case from its natural jurisdiction, that which is established by law. It translates into a prohibition on relief or the creation of exceptional, ad hoc jurisdictions. Article 32/9 of the CRP says the following: no case can be removed from the court whose jurisdiction is established by previous law. From reading this standard, 3 corollaries emerge into which this principle is broken down:
There is a formal reserve of law – that is why it is called the principle of natural or legal judge. The natural judge is the one who is fixed through the law. The law must determine the jurisdiction of criminal courts. The law defines the powers of the courts.
The second corollary is linked to the idea of

anteriority, although this idea is not unequivocally expressed in the law. It is not fixed in relation to what must be prior and that is where controversy arises.
Regarding this second corollary, Taipa de Carvalho says that the law must be prior to the commission of the crime, in relation to the facts that are being assessed by the court. In relation to the powers of the courts, the principle of legality enshrined in article 29 of the CRP applies. This idea by Taipa de Carvalho does not deserve support from Figueiredo Dias nor from the majority of scholars, who believe that the imposition of prior determination of powers in relation to crime could generate serious disturbances when there is a global change in the judicial map. Ex: in 2013/14, areas that roughly corresponded to the area of

municipalities began to correspond to the area of

districts. In Taipa de Carvalho's thesis, the courts that were installed would not be competent for now and those that were declared extinct would continue to exercise functions for now until all cases were judged for facts that had been committed before the entry into force of this law that changed the municipal judicial map. This meant that some extinct courts would continue to exercise functions and function and some created courts would have few cases waiting for all those crimes that had been committed before the law came into force to have been definitively judged. This causes great disruption to the functioning of justice and creates an ungovernability of criminal proceedings to which Figueiredo Dias is sensitive.

Figueiredo Dias says that what matters is defending the essential core of the principle of natural or legal judge, that is, what we seek is to avoid manipulations or concrete modifications of jurisdiction, removing the case from the court to a different court. Exemption or the creation of exceptional courts to judge a specific and concrete cause is prohibited, but the principle of natural or legal justice does not prohibit the existence of general modifications to the order of jurisdiction of criminal courts determined by law that is subsequent to the actual practice. It does not prevent the law that comes into force after the fact from modifying the scope of the order of jurisdiction. What it prohibits is that a law that comes into force after the fact removes jurisdiction for a specific case from one court, handing it over to another or that creates an exceptional court to judge a specific case.

The third corollary concerns the establishment of a definitive order of competences. It is not only necessary for the law to define the jurisdiction of the criminal courts and for the law to be prior to something that the CRP does not say what it is, it is also necessary for the law to define the exhaustive order of jurisdictionwhich cannot be changed through a concrete administrative act. This third corollary is also controversial because the method of concrete determination of competence is admitted in certain situations. This corollary is the abstract determination of competencies. The law determines a specific set of criteria and competencies. There are essentially 4 criteria, which give rise to one:

Functional competence;

Material competence;

Territorial competence;

Competence by connection.

Let us now explain each of the skills.

Functional competence

Functional competence serves the different segments into which the process is divided. And it can be functional competence by degrees or phases.

Functional competence by degrees – 1st, 2nd or 3rd instance courts are distinguished.

Functional competence in phases – distinguishes between pre-trial, trial, appeal and sentence execution courts.

Functional competence is of less interest.

Material competence

Material jurisdiction divides the jurisdiction of courts according to their different types. Each type of court is assigned a specific category of criminal cases depending on the subject matter. Material competence is distributed according to different criteria. It can be served by:

Quality/nature of the agent –

In this case, the criterion is subjective and the law establishes cases in which the law meets this criterion of the quality of the agent. Ex: to judge the PR, the PM or the PAR the full criminal sections of the STJ are competent (article 11, no. 3, paragraph a)). If the issue is to judge cases for crimes committed by judges of the Supreme Court of Justice and Relations and magistrates of the Public Prosecutor's Office who exercise functions in these courts, the criminal sections of the STJ are competent, in accordance with article 11/4, al. . The). If crimes are committed by judges who are not STJ or Relations judges or by MP magistrates who do not exercise functions in these courts, the criminal sections of Relations are competent. To judge certain people, regardless of the crime they commit, certain types of courts are competent, courts that are of a higher hierarchy and that as a rule do not have jurisdiction to judge in the first instance, but depending on the dignity of the functions performed by the accused, they are the courts that in the first instance have jurisdiction to judge it. It is about honoring the special dignity of holding certain positions. It would not make sense for a judge who performs duties in a court of law to be judged by a judge from a lower-ranking court, e.g. ex. (article 12.º/3, paragraph a)). That is why this subjective criterion for the distribution of competences is established.

Severity and nature of the crime – Apart from situations defined by the quality of the agent, the criterion is objective, taking into account the severity and nature of the crime and not the quality of the subject who will be judged. This objective criterion can be:

Qualitative when considering the nature of the crime.

Quantitative when the criminal framework provided for that crime is taken into account, that is, the severity of that crime.

There are individual and collegial courts and, within the latter, there are collective courts and jury courts.
Jury court: It has little tradition in Portugal and has a different way of organizing and functioning than the jury court we know from North American films. Differences between our jury court and the North American one:
Our jury court is made up of the 3 judges who would be part of the collective court, 4 effective jurors and 4 substitutes, while the North American one is made up of 12 lay jurors.
Portuguese jury courts decide by majority and not unanimously. It may happen that 4 lay jurors form a majority in relation to the 3 career judges.
Another difference concerns competences, as the Portuguese jury court can decide the issue of guilt and determination of the sentence, while the North American jury court only decides on the issue of guilt and determination of the sentence.offers on the agent's culpability.
Jury court decisions in Portugal are always reasoned, whereas in the USA the jury's verdict does not have to be reasoned.
What criminal cases are subject to the jury trial? The objective-qualitative criterion and the objective-quantitative criterion intervene here. The jury court is prepared to judge the most serious criminal cases. The jurisdiction of the jury can be defined positively, but also negatively.
In its positive delimitation, the CPP says that the jury is competent to judge cases that concern crimes covered by a specific place in the CPP (article 13/1 of the CPP). Reference from article 13/1 to articles 236 to 246 of the CP and 308 to 346 of the CP. These are crimes against the state and other infractions. In article 13/1 we have the materialization of the objective-qualitative criterion, which refers to the nature of the crime. Article 13/2 takes into account the seriousness of the crime. The jury trial only works as long as in one case or another there is a request to that effect from one of the legitimate procedural subjects. The assistant, the MP or the accused have the right to request the intervention of the jury. If there is no request, the process is not assigned to the jury court and is the responsibility of the collective court. Causes that can be known by the jury may necessarily be known by the collective court, but the reverse is not true – there are issues that can be known by the collective court and that could not be known by the jury.
Regarding the negative delimitation, there are criminal cases that the jury can never judge – these criminal cases are set out in article 207/1 of the CRP (the jury, in the cases and with the composition that the law establishes, intervenes in the trial of serious crimes, except for terrorism and highly organized crime, particularly when the prosecution or defense so requires). That is, the jury court cannot intervene under any circumstances in crimes of terrorism and highly organized crime. Why does the CRP prohibit the operation of jury courts for high crime and terrorism crimes? The CRP, knowing that these are particularly serious crimes and that they involve an increased risk for those who intervene with adjudicative functions, did not want to impose this increased risk on ordinary citizens. Obviously, there is also an increased risk for the judge, and the state is obliged to ensure their protection, but it is an official duty that the judge assumes, and the citizen does not assume this official duty to judge. It is to avoid subjecting citizens to these excessive risks that this is prohibited. What is terrorism and highly organized crime? As for terrorism, the legal types make a cut of the typical factuality and it is more or less well cut. But what constitutes highly organized crime is no longer the case. Highly organized crime is not a legal type, it is an operational concept whose fulfillment can be done in a certain sense or in another sense different from the ordinary legislator. How we are going to fill this indeterminate concept is the question that arises. The CPP offers a definition in article 1/m), but this definition has not been the same from the original version to the present. Is it this concept of the CPP that did not exist at the time the CRP was approved that should be taken as a reference for the integration and densification of the constitutional concept of highly organized crime? We cannot read the constitutional norm in light of ordinary law because that would be an inversion of terms, but the code norm offers interpretative support. It is not decisive, it is not decisive. We cannot interpret the CRP in light of ordinary law, but in light of the interpretation of what constitutes highly organized crime, we can use the definition of the CPP as an interpretative index, but it is not a decisive criterion.
The jury court also did notis competent, by law, for crimes committed by political office holders – article 40 of law no. 34/87. In crimes committed by political office holders, due to the nature of the crimes and agents involved, there is greater permeability to social functions that are contrary to the idea of

justice. People decide not based on justice, but based on electoral preferences.
Collective court: The collective court is competent to judge more serious cases that do not fall within the jurisdiction of the jury court. The CPP assigns jurisdiction to the collective court according to the objective-qualitative criterion and the objective-quantitative criterion. The expression of the objective-qualitative criterion is article 14/1 and 2, al. The). Article 14/1 has exactly the same wording as article 13/1 (make the same references). The idea that all cases that fall within the jurisdiction of the jury court fall within the collective court is confirmed. Article 14/2, al. a) – 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. Homicide crimes also fall under the jurisdiction of the collective court, even if it is a privileged homicide that is not punishable by a

prison sentence of more than 5 years due to qualitative objective criteria.
Regarding the objective-quantitative criterion, see article 14/2, al. b) – The collective court is also responsible for judging cases that, although they should not be judged by a single court, concern crimes: b) whose 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. The qualitative criterion always prevails over the quantitative. In the jury trial, if the crime is one of those articles referred to in article 13, no. 1, even if the crime is punishable by a prison sentence whose maximum limit is less than 8 years, in one of the hypotheses of article 13/1 the jury has jurisdiction, as the qualitative criterion always prevails over the quantitative criterion. The same applies to the collective court, that is, if the crime is an intentional crime or aggravated by the result that has as an element of the type the death of a person, the competent court is the collective court even if the crime is punishable by a penalty of imprisonment, the maximum limit of which does not exceed 5 years.
Single court: As for the single court, it has residual jurisdiction in criminal matters, that is, all cases that do not fall within the jurisdiction of the collective or jury courts are the jurisdiction of the single court. But it also has its own competence defined according to objective-qualitative and objective-quantitative criteria.
The objective-qualitative criterion is expressed in article 16, paragraph 2, al. a) – Reference to articles 347 to 458, which refer to crimes against public authority, such as: disobedience, coercion, riot, etc.
The quantitative objective criterion is enshrined in article 16/2, al. b) – The single court is competent to judge crimes punishable by a prison sentence of no more than 5 years. The qualitative criterion prevails once again over the quantitative criterion.
Crimes against public authority are crimes within the jurisdiction of the single court even if the crime is punishable by a prison sentence with a maximum limit of more than 5 years. Crimes against public authorities are judged by the single court even if they are more serious because the victim of the crime is the public authority and this makes the collection of evidence easier and more reliable, allowing the formalities of the process to be more complex. simple. As there is trust in the public authority, which is the victim of the crime and can immediately collect the relevant information, a greater simplification of the formalism in the trial is permitted and therefore the judgmento it is not required to be weighed and therefore it is done by a single court. The single court is also competent to judge cases for crimes that would fall within the jurisdiction of the collective court because they are punishable by a prison sentence of more than 5 years when the MP understands that in the specific case a prison sentence of more than those 5 years should not be applied. (article 16/3). This standard is a standard that implements the method of concretely determining competence. It is not the law that establishes the definitive order of jurisdiction. The law establishes competence, but allows a judicial authority to implement a competence determined by law – this is linked to the 3rd corollary of the principle of natural or legal judge.
The method of concrete determination of jurisdiction is enshrined in article 16/3 - "it is also the responsibility of the single court to judge cases for crimes referred to in paragraph b) of no. , when the public prosecutor, in the indictment, or, in an application, when knowledge of the competition is supervening, understands that a prison sentence exceeding 5 years should not be specifically applied."
Certain cases that would be the jurisdiction of the collective court because they are punishable by a prison sentence of more than 5 years become the jurisdiction of the individual court if the MP, in the indictment or in a request made after that, understands that the penalty should not be applied to the case. imprisonment for more than 5 years. This rule raised some difficulties at the beginning of the CP's validity because the doubt arose as to whether it would comply with article 32/9 of the CRP. The constitutional court ruled that there was no unconstitutionality:
The constitutional court understood that the rule was not unconstitutional because it considered that it is still the law that establishes the jurisdiction of the single court, that is, it is still the general and abstract law that says in which cases a case that would be within the jurisdiction of the court collective may become the jurisdiction of the single court. The law sets out requirements and then attributes to the MP the competence to verify the existence of these requirements and attributes the competence to decide to the single court because the MP is limited to implementing a competence that the legislator already establishes and defines.
The constitutional court also says that there is no violation of its essential core, although it can be questioned whether there is an affectation of the rule of article 32/9, that is, the principle of natural justice, which is the prohibition of the relief of jurisdictions of exception. There is no relief here because there is a dimension that remains unchanged, which is territorial competence. The MP's only intervention is regarding material competence. It remains the district court that has jurisdiction, but instead of being a group of judges it becomes a single court.
The single court, which becomes competent by virtue of the law and this intervention by the MP implementing the law, cannot impose a prison sentence of more than 5 years. The single court continues to have the powers that the law in general assigns to it, and cannot sentence a prison sentence of more than 5 years. It is bound by this maximum ceiling (article 16/4 – in the case provided for in the previous paragraph, the court cannot impose a prison sentence of more than 5 years). Although this paragraph 4 is an argument that allowed the constitutional court to conclude that the norm was not unconstitutional, it raises some doubts and controversies related to the violation of the principle of reserving the judicial/jurisdictional function because it would be attributing to the MP a power to condition the jurisdiction of the courts. The court would only be bound by the law, it would also be bound by the MP's decision that would impose

a maximum ceiling on jurisdiction.
This censorship was also discarded by the constitutional court, understanding that there was no violation of article 202 of the CRP because, in fact, what is established in this norm is not very different from herewhich is established in other norms and which is, in essence, an emanation of the MP's ownership of the criminal action. The MP is responsible for the criminal action and this means that the MP has not only the power to accuse, but also the power to present the state's punitive claim. Representing the state's punitive intention means establishing limits on what the court will later be able to judge. When the MP defines the object of the case in the indictment, the court cannot judge anything other than the object set out in the indictment and therefore the court is conditioned by the facts described in the indictment and even by the legal sub-solution that the MP makes of these facts. The MP always conditions the court's cognitive activity, and this is not a unique case – it is not only in the light of the accusation and representation that the MP conditions the court's cognitive activity.
Also in article 409 of the CPP, where the prohibition of reformatio in pejus is enshrined, which states that the higher court cannot aggravate the sentence applied in the first instance when the appeal was filed only by the accused or by the MP in the interest of the accused. . This means that if the MP does not file an appeal in the interest of the state's punitive claim, the powers of the higher court are limited. Here too, the court is conditioned by the activity of the MP. Here too, it was understood that there was no unconstitutionality.
Territorial competence
It answers the question of which court, depending on the territory, is competent to judge a given case. The distribution of territorial jurisdiction meets the ease of collecting evidentiary material and the requirements of general prevention. The competent court will be the one where the facts occurred because it is there that it is easier to collect evidence and because it is there that demands for general prevention are felt with greater incidence (it is necessary to restore the trust of that community in the violated norm) and also for reasons which are related to avoiding discomfort from witnesses who, as a rule, will live close to the place where the crime took place.
The general rule of territorial jurisdiction is that the court in whose area the crime was committed is competent –

article 19/1. In the case of a resulting material crime, the court where the result occurred will have jurisdiction.
There is, however, a deviation introduced in 2007 to this rule, which appears in article 19/2 of the CPP:
When it comes to a crime that has as its element the death of a person, the competent court is the one in whose area the agent acted, or in case of omission should have acted, and not the one in which the result of death occurred - it matters the place of the criminally relevant action or omission and not the place of production of the typical result. The victims of these serious incidents generally ended up dying in central hospitals (and the jurisdiction always rested with the courts in those areas), removing the jurisdiction of the court from the place where the evidence was collected, where the collection of evidence would be simpler and the requirements of general prevention would be felt more acutely.
Articles 19, 20, 21, 22 and 23 contain special rules for determining territorial jurisdiction. See the law for this purpose.
Competence by connection
This is not, in the proper sense, a type of jurisdiction, but rather a set of deviations from the normal distribution rules of criminal court rules. The general principle of our code is that for each agent and each crime a process is organized and a certain court is competent in that process, but what happens in practical reality is that for different reasons, it may be convenient to judge in the same process more than an accused and more than a fact.
The connection can be:
Original: A single trial is organized to judge several defendants for several crimes or several defendants for the same crime.
Supervening: When the processes are separated ab initio and are subsequently joined.
There are material reasons that justify the connection of processes:
They are linked to programmatic objectivesics of procedural economics. If there is a connection between the facts, the evidentiary activity benefits from the joint assessment of these same facts. If the facts are materially related, there is a benefit in terms of procedural economy if they are indicted in the same process. The proof is the same. The same evidentiary activity will allow conclusions to be drawn from several facts.
There is also the idea of

non-contradiction of judgments - if there is a material connection between the facts, the circumstance that part of these facts is assessed by one court and the other part by another can enhance/generate a contradiction in decisions that discredits the courts and reduces confidence of the community in the justice of decisions. Example: Operation Marquis.

Note: The formation of a single process has advantages, but it also has disadvantages, both from the perspective of justice and from the perspective of the defendant's defense rights. A monstrous process (mega-process) becomes ingestible from a defense point of view, as it is almost impossible to exercise an effective defense in relation to such a broad set of facts and such a significant body of evidence within the time limits that the law establishes. That is why an anomaly occurred in this process. The law establishes deadlines for carrying out procedural acts and allows them to be extended by decision of the judge at the request of the procedural subjects and this extension must not exceed 30 days (article 107/6). But in this specific case, the deadlines, e.g. e., for the appeal of the investigative decision, up to 120 days were extended beyond what the law itself establishes for the maximum period for extending procedural deadlines. It means that our code is prepared for processes of this nature. The deadline was only extended by agreement of the procedural subjects, as the law of the year contemplated this hypothesis. It is a difficult process to govern from the perspective of the state's punitive intention, and not just from the defense side, as it is difficult to fully prove it with such a broad set of facts and evidence and prescription could be a more likely result – the procedural delay that results from the extension of deadlines and the evidentiary activity itself can lead to a prescription. The alternative is also not pleasant, as the alternative would be the division of materially related facts by several different processes – “procedural salamization”. “Procedural salamization” also has drawbacks, in that the same defendant may be answering for several decades for materially related facts in different processes without being able to pacify his life and actually be accountable to justice, to the detriment of his legal peace and the community trust in standards.

Neither procedural salamization nor the creation of monstrous processes are convenient. The difficulty in this matter is such that no one understands what should be changed. Recently, a set of modifications to the CPP were approved by the AR that make the connection difficult/restricted.

What are the foundations of the connection? There are two connection modes:

Subjective connection – Exists when the agent is the same. Serves the agent's unit or sameness. There may be a connection when several crimes are committed by the same person.

In our code there is no case of purely subjective connection. The fact that a person commits several crimes does not in itself generate a procedural connection. The closest hypothesis is that provided for in article 25 of the CPP, but a tenuous relationship between the crimes is still required. It is sufficient, for example, for crimes to have been committed in the same district, that is, for them to fall under the jurisdiction of courts based in the same district for this tenuous relationship to exist.

In other situations of subjective connection, the presence of objective elements is even more visible (article 24/1, a) and b)):

Article 24/1/paragraph a) – In addition to the sameness of the agent, it is required that the crimes be committed through the same action or omission (there is a material relationship between them).Article 24/1/point b) – In addition to the sameness of the agent, it is also required that the crimes have been committed on the same occasion or place (spatial-temporal connection), plus:

Consequential relationship with one being the cause-effect of the other. Example: A riot is organized to carry out an evasion.

Complementarity between crimes (with some intended to continue or hide others). Example: Someone commits a crime of robbery and to hide the crime of robbery, he kills the witness who saw the robbery being committed.

There are no cases of a purely subjective connection, but it can happen that a person commits several crimes. When someone commits several crimes, before the conviction for any of them becomes final, they are sentenced to a single sentence. How do you convict with a single sentence if there isn't just one trial after all? Each of the processes runs separately, but after all decisions have become final, the process returns to the court of last conviction and this determines, based on the partial sentences that have already been applied to the agent, the single sentence that should be imposed on him.

The territorially competent court is the court of the last conviction, but if it does not have material jurisdiction, the jurisdiction is attributed to the court that is located in that place, in that district. Let's imagine someone who committed a crime of murder in 2019 and another of robbery in 2020. For the crime of murder he was sentenced to 9 years in prison and for theft to 2 years in prison. The homicide was judged by the Lisbon collective court and the theft crime was judged by the Porto singular court. In this case, the court of the last conviction was the district court of Porto and therefore it would be the one to determine the single sentence, but it was a single court since the single court will not have jurisdiction to apply the single sentence because it is a matter of single penalty for crimes punishable by a prison sentence of 9 and 2 years, the jurisdiction will be that of a collective court. It will be a district of Porto because it is the court of the last conviction, but it will be a collective court because the single court would not have material jurisdiction to determine the single sentence. How is a single penalty determined? The minimum limit of the competition frame is 9 years, the maximum is the sum of the partial sentences, that is, 11 years, and the single sentence will be in this range.

Jurisdiction of the court – article 471.º/1 and 2 of the CPP.

Objective connection – Attends to the identity of the crime or the existence of a material relationship between several crimes that can be attributed to different people. It is referred to in article 24/1/c), d) and e).:

Point c) refers to a situation of criminal participation.

Point e) refers to a situation of crimes committed reciprocally (there are several crimes that are materially relational because they are committed by two people against each other).

Subparagraph d) refers to the situation of several agents having committed crimes in collaboration on the same occasion or place, with some being the cause or effect of the others or with some intending to continue or hide the others.
The law, however, establishes obstacles to connection:
It only operates in relation to processes that are in the same procedural phase (article 24/2). If the case is already in the trial phase and facts are discovered that are materially related to those that are being investigated at that time and it is still in the investigation phase, there cannot be a procedural connection here.
The connection does not operate between proceedings that are, or are not, within the jurisdiction of the juvenile court.
There is no procedural connection when it comes to tax crimes of different nature (article 46 of the RGIT – General Regime of Tax Offenses).
There is no procedural connection and crimes that are or are not committed by political office holders must be judged separately (article 42 of the liability regime for political office holders).
There is no procedural connection when crimes that are and are not strictly military in nature are involved (article 113.ºof the Code of Military Justice).
The processes can be joined/joined (supervening connection), but they can also be separated if joint assessment proves inconvenient. In the investigation phase, the joint assessment of several facts may be convenient. But then it may happen that at the trial stage the inconveniences outweigh the advantages. Example: Driving license processes.
We will have trial sessions for months in which several people are accused, in relation to some of them the relevant facts are only discussed for 10 minutes in a particular session of the many that will take place. And if they are accused in this case, they must have a defender in the case, and they must be present at the trial hearing for several months with the uncomfortable financial costs that this entails.
In these situations where there are defendants who committed criminal mischief, a joint trial is highly inconvenient – there may have been an advantage in the joint assessment in the investigation, but once the accusation has been brought, it would be good for the MP to bring separate charges.
The law states in which cases there may be separation (article 30). In short, there may be separation when there is a weighty interest that serves the defendant, but there is also separation when the connection could represent a danger to the state's punitive intention, e.g. e., because the statute of limitations is approaching.
If the case is separated, the court to which the jurisdiction has been attributed under the rules of procedural connection remains competent to judge the case – there is an extension of jurisdiction (article 31/b)). This serves to avoid manipulation of powers and to prevent separation from being used to take the case away from the court to which it was initially assigned.
Exception to the rule of perpetuation of jurisdiction: Article 30/2 – At the request of one or more of the defendants, the court may also take the action referred to in the previous paragraph when another or more of the defendants have requested the intervention of the jury. In this case, as the separation is dictated by the interests of the defendants who do not want to be tried by the jury court, by virtue of the separation, the case of those who did not want to be tried by the jury court will not be the responsibility of the jury court, with the court having jurisdiction. collective (article 30/2 and 3).
The connection is not a modality of competence, but a set of deviations from the normal rules of competence. When any of the fundamentals of objective or subjective connection are verified and there are no obstacles to the connection, a single process is organized. And which court is competent to judge this single case that will be formed?
Material competence (article 27) – Regarding this competence, it is attributed to the court of the highest hierarchy or type. Imagine a crime of active corruption by a citizen who pays the judge to decide a case in his favor. To judge ordinary citizens for the crime of active corruption, a single court would be competent. The criminal sections of the Porto Court of Appeal are competent to judge the judge, because the crime occurred in Porto. Due to the connection, a single process is organized and the court of a higher hierarchy has jurisdiction. In this case, the Porto Court of Appeal had jurisdiction. The connection changes the rules of material jurisdiction.
Territorial competence – Article 28.º.
Procedural Subjects - The Public Prosecutor's Office
It is also a procedural subject. It is a magistracy that is different from the judicial magistracy because it is a hierarchical magistracy although it enjoys a status of external autonomy, that is, autonomy in relation to the other powers of the state. On an internal level, there is also talk of the MP's autonomy, but this internal autonomy, of each specific magistrate, has to coexist with the relations inherent to the hierarchy – there are conflicts between internal autonomy and the hierarchization of the MP's judiciary. There was a controversy in 2020 with a directive:
Regarding the issue ofKnowing whether or not a hierarchical superior can give orders to a subordinate is indisputable that this is so, but these orders must be legal, under penalty of ceasing the subordinate's duty of obedience.

Another question was whether these orders should not be given in writing, whether there should not be a documentary trail of them in the process because the fact that a magistrate other than the one who holds it should have intervened in that investigation must be known to the accused and of other procedural subjects who wish to protest against the decision given. If hierarchical intervention is triggered, in essence, it is triggering the intervention of the superior who, materially, was the one who decided.

But now it is said that hierarchical superiors can give orders to their subordinates, that there is a duty of obedience unless the orders are illegal, and that these must be given in writing and mention must be made in the process that that procedural act was practiced upon instructions from the hierarchical superior, however, the superior's order does not remain in the process, but is documented in a parallel process that the procedural subjects can consult if there is a reasonable interest and with this, an attempt was made to harmonize the issue of internal autonomy with the hierarchy, to in addition to the protection of the defendant's rights as well.

The MP is the holder of the criminal action (article 219 of the CRP). As the holder of the criminal action, it is his responsibility to represent the state's punitive intention. The CPP, in article 53, specifies the powers of the MP as holder of criminal proceedings.

Skills:

Competence to prosecute (article 53/2, paragraph c));

Competence to direct the investigation on which his accusation is based (article 53.º/2, paragraph d)). The MP is the dominus of the inquiry. Of course, in the investigation, there are acts carried out by the OPC. It is the MP who is responsible for defining the strategy for directing the investigation and lines of investigation. We have already seen that this direction of the investigation raised doubts at the beginning about the compatibility with the investigation – referring to the matter already given regarding the CRP standard (all instruction is the judge's responsibility, but it referred to the investigation phase to which the CPP later called it an investigation). Judges do not direct investigations, they only authorize acts that, as they are restrictive of DF, cannot be authorized by the MP.

Competence to sustain the accusation at trial (article 53/2, paragraph c)).

Competence to lodge an appeal, even if in the exclusive interest of the defendant (article 53/2, paragraph d)).

Competence to promote the execution of criminal reactions (article 53/2, paragraph e)).

Some of the acts of the investigation are not carried out by the MP. Many of the acts in the investigation are carried out by the OPC. The question arises as to how the OPCs articulate with the MP, given that the OPCs are not procedural subjects, they are mere procedural participants.

The OPC concept is not an organizational concept, it is a functional concept. It is the CPP itself that defines the concept of OPC in article 1 al. c): For the purposes of this code, the following are considered: c) “criminal police bodies” are all police entities and agents who are responsible for carrying out any acts ordered by a judicial authority or determined by this code. OPC are those who carry out procedural acts by order of a judicial authority in criminal proceedings. They can be OPC, PSP, GNR, PJ (these 3 are police forces with generic competence), AT, ASAE, SEF, etc. They are OPCs, without prejudice to having other powers, when they carry out procedural acts by order of a judicial authority.

OPCs act under the direction of a judicial authority, without prejudice to having some autonomous powers. For example, it is up to some OPCs to receive news of crimes, even though they must transmit this crime news immediately to the MP, and cannot do so within a period of more than 10 days for the MP to open an investigation. Even before the MP opens an investigation, the OPC has the power to carry out precautionary and police measures (rec.looking at traces, identifying witnesses, preventing evidence from being lost), regulated in articles 248 and ss.

The Criminal Investigation Organization Law also gives OPCs technical and tactical autonomy. Police officers have their own way of acting and this technical and tactical autonomy is not guaranteed in the CPP, but rather in article 2 of the Criminal Investigation Organization Law.

What type of relationship intercedes between the MP and the OPC? There are several models.

Model of total autonomy and independence – Brazilian model. The criminal investigation is carried out by the police and, at the end of the investigation, the police deliver a report to the MP whether or not they offer a complaint, which here would be equivalent to the deduction or not of an accusation. There are those who consider this regime to be better because:

It gives greater freedom of action to the police to act in accordance with the strategies they are used to;

It would ensure greater impartiality from the MP. The MP was not involved in the investigation and therefore would be more equidistant when offering a complaint, and would only do so if the evidence collected was really strong.

However, there are also disadvantages:

The free hands that are offered to the police can, however, also be a risk from the DF's point of view.

There is also the issue of “ensuring a certain impartiality of the MP”, which is not decisive. What is decisive is that those who accused and investigated do not judge. It is not strictly necessary that the person who investigated does not accuse or that the person who accuses does not investigate. It is a superfluous requirement. What matters is that whoever judges, the judge, has not investigated and accused.

Model of absolute dependence – Could present itself as an alternative to the other.

Functional dependence model – The police are not under the hierarchical direction of the judiciary, there is only a functional dependence. At the organizational, hierarchical and disciplinary level, the police are dependent on their own ministries and general directorates. It is only at the functional level that the relationship of dependence is exercised with the judiciary, with the MP in the investigation and with the JIC in the investigation.

Procedural Subjects - The Defendant

The constitution as a defendant in Portuguese law: moments and formalities

The code does not define who the defendant is, although he is a fundamental character in the process. The high-water mark of the accusatory system is the attribution to the defendant of the status of procedural subject and no longer a mere object and means of evidence. The law defines who the suspect is, but it does not define the accused, but rather structures and densifies their status – in articles 60 and 61, the general lines of the accused's status are established ("from the moment a person acquiring the status of defendant is guaranteed the exercise of procedural rights and duties, without prejudice to the application of coercive and property guarantee measures and the carrying out of evidentiary measures, under the terms specified by law").

By distinguishing the accused from the suspect, the criminal procedural law assumes that the constitution of an accused is linked to the recognition of the status of procedural subject (articles 58.º no. 2 and 4, 60.º and 61.º of the CPP), in contrast to that of a mere procedural participant. From a material point of view, the constitution of a defendant also means that the mere existence of evidence that the targeted person committed a crime or participated in it has been overcome. To prevent an illegitimate curtailment of the procedural rights that must be given materially to anyone who sees criminal proceedings being directed against them, article 59.º/2 of the CPP gives the suspect the right to be constituted as a defendant, at his request, whenever that steps are being taken that affect you personally. For the same reason, the CPP provides for other cases in which a defendant must be constituted before an accusation is brought or an investigation is requested – Article 272.º/1, Art. 58.º/1, al. a), Article 58/1, paragraph. b), Art. 58.º/1, al. c), Article 58,º/1, al. d), Art. 59.º/1.

The status of the accused: rights and duties

Let's see the requirements for assigning process qualitydefendant's status. The code says how and at what moment the procedural status of defendant is acquired. In other words, it defines the set of situations that give rise to the constitution as an accused and structures how this constitution as an accused operates.

These basic situations are in Art.57, 58 and 59. The core norm is article 58 and the basic situations are set out in article 58/1. We can group them into two:

The practice of acts that compress people's fundamental freedoms – Article 58.º/1/ al. b) and al. c): If a person is detained or a measure of coercion or asset security has to be applied to that person, they are considered a defendant, because it is an act that compresses their fundamental freedom, to which that person will have the right to react and that justifies the attribution of the status of defendant;

Existence of a suspicion – Article 58.º/1/al. a) and al. b): The existence of a suspicion made public or a certain degree of seriousness that justifies the attribution of the status of accused.

From a material point of view, the constitution of a defendant during the investigation also has, in fact, the meaning of having overcome the mere existence of evidence that the targeted person committed the crime or participated in it, and there is already a well-founded suspicion of the crime. commission of crime.

When we use the word “defendant”, we associate it with a certain stigma. But the status of defendant is a guaranteed status. When the 1987 code came into force, the aim was to anticipate the attribution of the status of accused as much as possible, because, in the previous code, many people were investigated without being aware of it and were not even able to defend themselves. Therefore, acquiring the status of accused is acquiring a status of guarantee, with associated rights that a simple suspect does not have, for example, being able to be assisted by a defender, the right to request the protection of evidence, the right to appeal, the right to request the opening of the instruction, among others. Therefore, contrary to our initial idea, it is not a stigma, although, of course, the public disclosure of the existence of the status of accused can be stigmatizing, but the legislator's purpose was to grant a guarantee status.

The assumption of the status of defendant is a guarantee, as the defendant has the status of procedural subject throughout the course of the criminal proceedings (article 57/2 of the CPP). This is a procedural position that allows for constitutive participation in the declaration of the law of the specific case, through the granting of autonomous, legally defined procedural rights, which must be respected by all parties involved in the criminal process (among others, articles 60. º and 61.º/1 of the CPP).

The defendant’s procedural status is shaped by three fundamental vectors:

The right of defense;

The principle of presumption of innocence until the final judgment of the conviction;

The principle of respect for the defendant's decision, one of the implications of the principle of presumption of innocence.

However, the recognition, from a social point of view, that the attribution of this status could result in damage, led the legislator, in

2007, to circumscribe, in article 58.º/1/ paragraph a) – “founded suspicion”. The adjective “founded” was not in the original version. Now, a well-founded suspicion is needed. In paragraph b) there was no expression “unless the news is manifestly unfounded”. It is a restriction that was made.

When these fundamental situations are verified, there is a duty on the part of those investigating to constitute the person as an accused. How does this constitution operate? Upon communication made by the OPC or judicial authority to the person concerned that they must consider themselves accused in the process and with the statement and, if necessary, the explanation of the procedural rights (article 61 CPP) that for this reason may be their responsibility – Article 58/2 of the CPP.

Paragraph 3 and paragraph 6 of article 58 of the CPP: Until 2007, the constitution as a defendant had to be doneby the OPC. As of 2007, OPCs continue to be allowed to appoint someone as an accused, but this constitution is subject to validation by the judicial authorities.

What if the OPC or judicial authorities do not constitute a person as an accused, despite filling out a basic situation? Failure to constitute a defendant in cases where it is mandatory (Articles 58.º/1 and 272.º/1 of the CPP) constitutes nullity, dependent on an argument, according to the provisions of article 120.º/2 paragraph d) of the CPP , as it is a legally mandatory act.

The law says in article 58/7 that statements that the person has made cannot be used as evidence. They cannot be used as evidence throughout the entire process. They have no probative value if there is an omission or violation of these formalities.

Note: Law No. 79/2021 was published, which changed some precepts of the CP and CPP. Article 74/1 of the CP states that the court may declare the defendant guilty. This modification was promoted in our normative language very recently, because, within the scope of the 1929 code, the active side of the legal-procedural relationship was the defendant. It was to distinguish it from civil proceedings that the legislator changed the word to defendant, but this mention still existed in the CP and will now be corrected.

Although there is a social cream on the figure of the defendant, in fact, the status of defendant is a status of guarantee. A simple suspect does not have the procedural rights that are recognized for the accused – rights of active intervention in the process and co-determination of the criminal decision. Therefore, at certain times or when certain acts have been carried out, the law requires that the person be constituted as a defendant in two situations, under the terms of article 58:

Because the suspicion has a certain density and the attribution of that procedural status is justified;

Acts that compress fundamental freedoms are committed and the person must be able to react, and can only do so by having this procedural status.

According to article 59:

Article 59/1 also refers to paragraph 2 of article 58, that is, in these situations it is also mandatory to proceed as required by article 58/2. It is only not mandatory to make this communication when it is the person who requests to be constituted as an accused.

By article 57:

If the person is not constituted as an accused in any of the situations that constitute the basis of Article 58 or 59, the person against whom the investigation is being carried out is constituted as an accused with the accusation, in the indictment order. Example: Someone who has escaped and cannot be located for questioning. In this case, with the accusation, the person in question is constituted as an accused.

However, if the accused is not questioned during the investigation, there is a nullity that can be remedied. It may happen that the investigation ends with an order to archive it. In this case, if there is a request to open an investigation, with the request to open an investigation the person in question is constituted as a defendant. In cases covered by article 57, it is mandatory to proceed in accordance with the terms set out in article 58/2, that is, it is also mandatory to inform the person that from now on they are accused. Of course, if the person is not found, this communication is not personal, but must be expressly included in the text of the accusation. We have already mentioned that, when the criminal prosecution authorities do not operate the constitution as an accused, despite some of the grounds being met, the consequence is the prohibition of validating as evidence the statements made by the person who should already be accused and who was not constituted. as such – Article 58 no. 5.

Remission error:

In article 59/3, reference is made to articles 58/3 and 4.

This reference was correct until 2007, because there was no current paragraph 3, nor the current paragraph 6, nor the current paragraph 7 in article 58. Therefore, 4 was 3 and 5 was 4. We were referring to what now appears in no. 4 and no. 5. It is particularly serious, because it is in paragraph 5 that the consequence of the defendant's failure to communicate is found. The legislator wanted to refer to paragraph 3 the7 of the previous article. The same can be said about the Article. 57th/3. Here, the reference was to paragraphs 2 and 6, but paragraph 7 was added more recently.

The defendant's right to defense

The right to defense constitutes an “open category” to which the rights that are recognized to the accused in compliance with the adversarial principle must be attributed:

The right to be present at all procedural acts that concern you;

The right to be heard by the court or the investigating judge whenever he must make any decision that personally affects him;
The right to intervene by offering evidence and requesting any measures deemed necessary;
The right to last statements.
In the words of Faria Costa, the right that criminal procedural law offers to the defendant is to “pronounce and contradict all testimonies or evidence”. The following should also be highlighted, with reference to the defendant’s right to defense:
The right to request the opening of an investigation, as a way of controlling the prosecution decision of the Public Prosecutor's Office or the assistant, in the case of a procedure dependent on a private accusation (article 287.º/1/ al. a) of the CPP);
The right to request intervention from the jury (article 13 of the CPP);
The right to oppose the withdrawal of the complaint or private accusation, thus being able to have your innocence declared at trial (article 51 of the CPP).
In 2021, a new solution was also introduced for legal persons, with a procedural regime being provided for these persons, with a core rule being that of knowing who represents them: The representative was appointed by the legal person and could not coincide with a person individual judged for the same crime, which contradicted jurisprudential practice... So, this legal solution was corrected, saying that a legal person is represented by its organic representatives, which may coincide with the natural person who is accused in the process (Art.57.º/5 to 8 CPP).
Procedural Subjects - The Defender
Procedural function
The CRP establishes as the right of the accused the right to choose a defender and to be assisted by him in all acts of the process, and the law may establish situations in which the assistance of a defender is mandatory (article 32/3 CRP). In the CPP there is a general provision on the mandatory assistance of the defender (article 64/1 CPP).
Article 20.º/1 of the CRP complements the constitutional norm, by determining that justice cannot be denied due to insufficient economic means, which is ensured by Law no. 34/2004, of 29 July, on access to the law and the courts, specifically with regard to legal protection in criminal proceedings (articles 39 to 44).
The CRP is not only aware of the defendant's right to have a defender. The CRP guarantees all defendants the right to choose a defender, without prejudice to the fact that, in cases of economic insufficiency, an unofficial defender will be appointed to the defendant. Of course, if there is a reason to do so, it can be replaced by another defender.
In addition to other cases that the law provides, a defender may always be appointed to the accused, if the circumstances of the case reveal the need or convenience for him to be assisted, and a lawyer must be appointed or appointed, when an accusation is brought against the accused or an opening is requested. of instruction (articles 64.º no. 2 and 3 and 287.º/4). The non-appearance of the defender in cases where the law requires the respective appearance constitutes an irremediable nullity (article 119.º/al. c) of the CPP).
The law may specify the cases and phases in which the assistance of a lawyer is mandatory:
In this part, there is a dissonance between the CRP, the ECHR and the ICCPR. These two international diplomas – to which Portugal is also linked – recognize the right to self-defense. The defendant has the right to defend himself or have the assistance of a defense attorney. They place the right to technical assistance and the right to self-defense as an alternative or right. While our CRP provides for the right to choosebe a defender and even anticipate situations in which this defense may be mandatory. In these situations, this means that the accused is not being recognized as having the right to defend himself. This issue has already been raised with the TC, which understands that the solution enshrined in law does not contradict the CRP, nor international diplomas to which Portugal is bound. This is a solution materially based on protecting the interests of the defendant, whose foundations are three:
On the one hand, we want to guarantee the defendant a technically qualified and, therefore, capable defense. It is important when the defendant is not a person with skills in the area of

law.
And even if it is, the defendant wants to be assured of a defense with a certain emotional distance. There are people specialized in law who, because they are directly involved in the case, would not have emotional distance and would not be able to guarantee a competent defense. There is a certain paternalism in the TC;
For certain procedural acts, it is inadvisable, for reasons of protecting other people, that the procedural act be carried out by another defendant. For example, sexual crimes or crimes that touch on the sphere of intimacy or especially vulnerable victims in which it is not advisable for the defendant himself to carry out the inquisition of these people.
This question has already been addressed to the UN human rights committee, which has already warned Portugal about the fact that our procedural law establishes the impossibility of self-defense in blind and abstract terms.
Procedural status
Because this is not a mere judicial representative of the accused: First of all, there may be a defender, even if the accused is

uninterested in his defense. It is a body for the administration of justice, which plays a different role in relation to the court and the Public Prosecutor's Office. Its function is to contribute to justice in the exclusive interest of the defense, presenting facts, evidence and legal arguments in the exclusive interest of the defense and compensating for the material factual inequality that exists between the prosecution – represented by the MP, technically prepared – and the accused – who can be any citizen.

The defender should not be responsible for merely representing the interests of the accused, but rather the role of a justice administration body that acts in the exclusive interest of the defense. A criminal proceeding that provides the accused with all defense guarantees is also characterized by the mandatory assistance of the defender. The defender's actions are exclusively in favor of the defendant, which is why he is justified in acting even without or even against the defendant's will. The defender is not obliged, even if he knows these facts, to bring true facts to the process that disadvantage his constituent. But this does not mean that he can commit crimes, namely, crimes of personal favor, for example, he must not distort evidence, fabricate evidence that does not exist, he must not help his constituent to flee abroad, etc. The lawyer, as a defender, does not have carte blanche to share crimes of personal favor.

The mandatory assistance of the defender allows us to conclude that he also participates in a constitutive way in the declaration of the law of the case. The defender may be a lawyer or an appointed defender, and the defendant may, in this case, appoint a lawyer at any time in the process, according to article 62/1 of the CPP. Unlike what has already happened among us, today defense is required to be technical. Article 330/1 of the CPP points in this direction, in the part that refers to the replacement of the defender by another lawyer or trainee lawyer and no longer to the replacement by a suitable person, as was the case in the original version, and amendment of paragraph 2 of the article 62 of the CPP. In the original wording of this rule, the appointment of a defender by the judge preferentially (not exclusively) affected a lawyer or trainee lawyer.

The appointment of a lawyer or the appointment of a defender constitutes a guarantee of the defendant's defense and, as such, is assumed in the CPP. Othe accused enjoys, at any stage of the process, the right, when detained, to communicate, even in private, with the defender (article 61/1 al. f) 2nd part of the CPP); that not even in cases of terrorism, violent or highly organized crime does the incommunicado regime that the defendant may be subject to before the first judicial interrogation extend to the defender (article 143/4 of the CPP); that the seizure and any other form of control of correspondence between the accused and his defender is prohibited, under penalty of nullity, unless the judge has well-founded reasons to believe that it constitutes the object or element of a crime (Art. 179. º/2 of the CPP); and that the interception and recording of conversations or communications between the accused and his defender is prohibited, unless the judge has reasonable reasons to believe that it constitutes the object or element of a crime (Article 187/5 of the CPP).

The question could be raised whether this would be an organ of justice tout court, which led, in fact, to the fact that at the beginning of the 20th century, in totalitarian states, the figure of the defender was dispensed with. It is an autonomous body for the administration of justice in that it “only” protects the interests of the defense, and is not limited by issues of impartiality. It therefore compensates for the factual inequality of weapons. The law states how the defender is chosen, and if not, Art. 66.º, you have mandated a defender, there are certain moments when a defender is appointed, at the time of bringing the accusation, for example. The same lawyer can assist several defendants, Art.65, and the same defendant can have several defenders. There are acts that only the defender can perform, Art. 64, and acts that only the accused can perform, such as agreeing to the provisional suspension of the process, in person. Acts not included in these two categories can be carried out by both.

Procedural Subjects - The Assistant

The Assistant Constitution: Legitimacy

It is also a procedural subject, by virtue of the constitution, which in article 32/7 says that the offended party has the right to intervene. It is a guarantee with constitutional dignity. It is the constitution itself that is the source. It is a Portuguese tradition that seems to be our originality, our law attributed rights to it. Article 281 of the CPP was inspired in Germany, but there it does not refer to the assistant. Our law, on the contrary, attaches great procedural importance to it.

From the moment a person becomes an assistant, he or she can intervene at any point in the process. However, you must request this intervention from the judge within the deadline legally provided for in paragraph 3 of article 68, depending on the stage at which the process is:

Up to five days before the start of the evidentiary debate or trial hearing;

In the cases of art.284.º and paragraph b) of no. 1 of art. 287.º the deadline established for the performance of the respective acts;

Within the deadline for filing an appeal against the sentence.

How does the assistant constitution work?

According to article 68 of the CPP, it consists of the holder of the interests that the law specifically wanted to protect with the incrimination, as long as they are over 16 years old, having the legitimacy to constitute the offended party. The legislator adopts a strict or typical concept of offended party, which does not include simple injured parties, as they can acquire the status of civil parties, but are not offended for this purpose and cannot become assistants.

Knowing who is the owner of the legal asset can imply the delicate task of inquiring about the legal type, which is inconspicuous with

the legal types that protect supra-individual assets, such as violation of legal secrecy, it can be problematic to know if there is an individual offended and to know who it is .

The jurisprudence of the STJ, in extending the concept of offended party, extends the concept to situations in which supra-individual legal interests are at stake.

These are the cases of:

Judgment 1/2003 establishing jurisprudence, says that an offended person is a person whose loss was intended by falsifying a document (it is a crime of special intent), he or she canbecoming an assistant in the crime of falsifying documents;

Judgment establishing jurisprudence 2/2005: in proceedings for the crime of abuse of trust against social security, provided for and punished in article 107 of the general regime for tax infractions, the social security financial management institute has the legitimacy to establish itself assistant;

Judgment establishing jurisprudence no. 8/2006: in the crime of slanderous reporting, provided for and punished by article 365 of the criminal code, the slandered person has the legitimacy to become an assistant in the criminal proceedings initiated against the slanderer;

Ruling No. 10/2010: when there is a crime of qualified disobedience resulting from a violation of a precautionary measure – the person requesting the measure may be appointed as an assistant.

Then the law extends it, in article 68.º/1/e), it gives legitimacy to the appointment of an assistant for people in certain types of crimes, such as crimes against peace or crimes that are particularly difficult to investigate and whose assistance the assistant can provide to the MP is essential. The crimes of influence trafficking, malfeasance, embezzlement, are crimes resistant to investigation and that compromise the entire community that must be involved, everyone has the legitimacy to constitute themselves as assistants.

Procedural Status

But we have a problem, assistant intervenes as a collaborator of the MP in the punitive defense of the state. When in article 68.º/1/ paragraph e) allows any person to become an assistant, it began to happen that, above all, in crimes with media importance, journalists have become assistants, with the purpose not of helping the MP in investigation, but to have privileged access to the files, at a time prior to what would be a normal moment for the removal of external secrecy. When the normal deadlines, article 89/6, expire, external secrecy is lifted: it is in these cases where there is a gap between internal and external secrecy that it becomes useful for journalists to act as assistants.

We are in a situation of fraud against the law and Professor Sandra Silva argues that when it is clear that the interest is other than helping the MP's collaboration, there should be no appointment of an assistant. If this is not the purpose, this constitution should not be admitted.

In cases of corruption crimes, the legislator favors the appointment of assistants for certain people... Law 19/2008 of April 21st states that a court fee is waived for the constitution of courts for associations that aim to combat corruption. Separate laws provide for other cases of extensive legitimacy for their constitution, such as consumer associations, popular domain, emigrant community for discriminatory crimes.

In article 68, paragraphs c) and d) the cases of succession of the status of assistant, in which there is death and who has the legitimacy to become an assistant and situations of incapacity, someone who, on behalf of the offended party, may constitute themselves as an assistant.

The status of an assistant is that of a procedural subject, because he has the right and autonomous powers to determine the procedural course. The assistant intervenes as a collaborator of the MP, subordinating his intervention to that of the MP. In private crimes in the strict sense, it is the assistant's position that acquires predominance, he does not subordinate his actions to that of the MP, it is, in fact, the opposite. This, then, is what the assistant is responsible for accusing. But outside of these cases, of a private crime in the strict sense, the assistant is a collaborator of the MP and has procedural powers defined in article 69/2: requesting the production of evidence, filing an appeal, among others.

The law requires that the assistant, article 70/1: is always represented by a lawyer and even if the offended party is a lawyer, he must be represented by another lawyer, ruling 15/2016 of the STJ. The assistant's lawyer is not a procedural subject, he is the legal representative of the assistant, he has no powers beyond those resulting from the representation of the assistant.assistant. You cannot act against the assistant's wishes.

The Position of the Victim of the Process

The victim is not a procedural subject, he is a new figure introduced in 2015, of a hybrid nature, as he is located halfway between a procedural subject and a mere procedural participant. Well looked at, it is better to qualify as a procedural participant than as a subject.

The victim is recognized with certain rights, article 67-A no. 4, has:

Right to assistance;

Right to active participation in the process. It would seem that by having active participation that he would be subject to proceedings, but this participation is greatly reduced, as it will only be the rights enshrined in the CPP and in the victim's statute;

Rights to information about the progress of the case;
Right to protection;
The right to inform the MP or the court of the existence of evidence, but not the right to request new evidence, you can only offer evidence, you do not have the right to appeal against any order.
These rights are condensed in the statute of the victim and legal regime of domestic violence, Law 112/2009:
Right to information, to be heard, art.15 and 20 of the domestic violence regime and art.11 of the victim statute;
Protection against secondary victimization, art.17 of the statute and art.22 of the regime;
Be heard in certain circumstances, art.21 of the statute and art. 32 and 33 of the regime;
Right to protection for the granting of economic support.
In the CPP we have the right to intervene in the provisional suspension of the process, art 281/8, the victim can be heard and has the right to be informed about changes in the defendant's status when it is especially dangerous, articles 212 no. 4 and 247 no. 4 of the CPP.
Pursuant to article 82.º-A, the court, in the event of conviction of the accused, may arbitrate an amount of its own motion as compensation for the losses suffered by the victim when it has not filed a request for civil compensation in the criminal proceedings or separately, under the terms of articles 72 and 77, and there are particular protection requirements. This option may become mandatory if the rules of article 21 of the legal regime for domestic violence and article 16 of the victim's statute are included in the case.
Who is the victim after all? Does the position of victim become confused with the offended party?
According to article 67-A no. 1, victims are those who have suffered damage, while the offended party is constructed around a legal good. The concept of victim is constructed in the Anglo-Saxon fashion, according to the “harm principle”. Therefore, they are not equivalent concepts. The victim is any natural person who has suffered damage resulting from the commission of the crime. The family members of the person who died are also victims. The concept of victim is not equivalent to the offended party, it is a mix between the concept of offended and injured, because it is a person who suffered damage, but it must only be singular and not collective. Maria João Antunes criticizes the dispersion of norms: if there is a victim status, it would be in the statute where solutions should be condemned and not divided into different diplomas.
Procedural Subjects - The Civil Parties
Civil Compensation Emerging from Crime: The “Adhesion Process”
In some way, they are procedural subjects in a formal sense, but not in a material sense, since the legal relationship they lead is of a legal-civil nature.
How are civil and criminal liability linked?
Independence Model:
Known in Brazil, this request is made in civil courts and separately with regard to criminal action. The fact that the crime is proven exempts the injured party from proving the crime in this civil action – we have this exemption from proving the harmful fact, having to prove the remaining elements constituting civil liability.
Interdependence or Adhesion Model:
The civil request is formulated in the criminal action itself and discussed there. This solution is in article 71 of the CPP and has advantages:
Procedural economy – the triggering event for civil and criminal liability is the same and savesWe handle procedural resources, dealing with the facts together. It also avoids contradictions in judgments;
Assistance reason – favors the injured party in obtaining compensation without financial costs or with lower costs, since the civil request is formulated in a simplified way, the processing is less complex than a civil action filed separately. The injured party is exempt from paying the court fee in advance. There is an exemption from paying court costs if the request does not exceed 20 units of account, in the case of art.4o/1/m) of the procedural costs regulation. There is always an exemption for victims of domestic violence, in accordance with art.4/1/z) of this regulation.
We have deviations from this principle that our system enshrines: we have situations in which the civil request can be formulated separately – article 72 of the CPP, even though the principle is that of adherence:
Cases in which the request is made separately because there is an abnormal delay in processing the criminal proceedings, in concrete, if the criminal proceedings take more than 8 months, a common civil proceeding can be opened and the request made separately. It is no longer reasonable to impose the burden of waiting on the injured party;
Cases in which there are others responsible, in addition to the defendant himself. There may be other civilly responsible people – art. 72.º no. 1 al. f) CPP;
In case the procedure depends on the complaint or private accusation – in this case, the reason for the possibility of a separate request is to allow the criminal action to be withdrawn without this jeopardizing the subsistence of the civil request. Art.72.º/1/c).
We also have other cases that concern the inadequacy of the form of the criminal process, compared to the civil request – situations

that do not fit the notion of a civil request, such as the fact that it takes place in summary or very summary form, art 72/1 /h) CPP.
We also have cases of inadequacy regarding the civil process in relation to the criminal process, as in the matter of people with merely civil liability, art.72.º/1/f) ex vi art.73.º CPP, when exercising the right to compensation against an insurer, which invokes art.74 CPP, with the offended party and the person who suffered damage (which may be a legal person) having legitimacy to exercise this right. This regime refers to art.75, 77 and 84 CPP.
Substantive Nature of the Civil Compensation Claim
Civil requests, even if formulated in criminal proceedings, are considered to be strictly civil in nature – article 129 of the Penal Code. The substantive criteria for deciding the civil request are those provided for in the civil code - article 483 et seq. criminal and the decision given regarding the civil request. The evaluation criteria are different and the civil request does not lose its civil legal nature because it was formulated in criminal proceedings.
There may be civil and not criminal liability, for example: amnesty may extinguish criminal liability, but not civil liability; committing crimes of damage if intent is not proven; In the case of attacks on honor, in line with the jurisprudence of the ECtHR, there is greater permeability in this protection to not be considered a crime and to be owed, however, compensation.
In terms of processing, the request is formulated in criminal proceedings, but the processing of the civil request follows the principles specific to civil proceedings, such as the principle of the request. Certain more complex formalities are removed, so that the progress of the criminal process is not harmed, as is the case in art.78.º/3 CPP.
The decision given regarding the civil request forms a res judicata – article 84 CPP. If the injured party is not satisfied with the compensation and the decision becomes final, he or she cannot make another request.
The Repair of Article 82-A
Despite all this, we have a CPP rule that seems dissonant with what we have been saying – article 82-A of the CPP:
Allows for unofficial arbitration of compensation, the court may:
Arbitrate the restop unofficially;
When there has been a conviction; The criteria for granting this reparation are related to the special vulnerability of the victim. This does not respect the principle of request, it is arbitrated in the case of conviction only, the criterion is the vulnerability of the victim and special economic prevention requirements that may arise.
Who is the victim for the purposes of this rule? All the injured or just the offended?
In article 67.º-A, we have the densification of the concept of victim and we must have this concept as a reference for the rule of article 82.º-A of the CPP. The court is said to “may”. There are situations in which arbitration is mandatory:
Article 16 of the victim status;
Article 21/2 of the legal regime on domestic violence.
In any case, it is necessary to take into account that the amount arbitrated under this heading is deducted from the civil compensation that may be incurred – this does not prevent the victim from, in a separate process, making a civil claim, however, the value will be deducted from the value attributed in criminal proceedings.
Punitive Reparation as the “Third Way” of Criminal Sanctioning
What place does reparation have in the criminal system?
There are those who say that it is the 3rd way of criminal sanctioning – alongside penalties and security measures. We are far from this solution. However, we have legal manifestations of attributing some criminal value to the reparation:
In CP, it is one of the prerequisites for dispensing punishment;
It may be a mitigating modifying circumstance (article 72 CP), it is one of the factors to be taken into account when grading the sentence (article 71 CP);
It may also be one of the duties/injunctions that form part of the core obligations of suspending the execution of the prison sentence – substitute sentence, art.281.º/2 CPP.
We move towards a model of restorative justice:
When a crime is committed, the offense is caused to the community, but we have a specific person whose legal sphere is affected. The criminal penalty, as a rule, does not restore the harm caused to the concrete victim of flesh and blood – what it does is restore the community's trust in the validity of the norm, promote the resocialization of the agent, but always to prevent them from committing other crimes again. crimes.
Now, what is intended by valuing reparation is greater attention to the victim:
Compensation for the damage caused by the crime satisfies the interest of the specific victim who suffered an injury in their legal sphere, the specific person who was injured.
In this regard, we have the rule provided for in article 206 of the CP:
The crimes of theft and breach of trust allow for the extinction of criminal liability if the agent fully repairs the damage caused by the crime and as long as there is an agreement with the offended party. It is a clear example of the valorization of reparation, the state

recognizes that reparation for the damage caused by crime has criminal value in itself.

These crimes are public crimes for which reparation is useful, despite, for example, criminal mediation, which is a form of restorative justice, is not permitted for public crimes.

State Assistance Function

Provision for a state fund to compensate victims of violent crimes and domestic violence: Law no. 104/2009, referred to in article 130/1 of the CP;

Possibility of attributing to the injured party an economic benefit resulting from the state giving up what it has received as loss of products, instruments and advantages within the limit of the fine, art.130.º/2 and 3 CP.