Diploma - Approves the Portuguese Criminal Procedure Code. Repeals Decree-Law No. 16489, of February 15, 1929.

After several purposes and attempts, some of which began to be implemented, which were drafted over the years, a new Code of Criminal Procedure finally entered Portuguese legal life. Only non-significant works are uncontroversial; the code, which now occupies the space of the 1929 code and the separate legislation that, dispersed and, at times, incoherently, complemented it, arises, however, as a result of considered preparation and a broad institutional debate.

Organic changes and adaptations of various kinds will result from its entry into force; It will even be necessary to reconvert, to a certain extent, the mentalities of some of the system's protagonists. Hence the need to postpone the start of its application, excluding, in addition, such application to pending processes.

An exception was made; it is believed with complete justification. It concerns the suppression of non-caution, by force of law, for certain categories of crimes. Indeed, the principle of abstract liability for all infractions is what is in line with the fundamental right of personal freedom. It presupposes, in fact, a reaffirmation of confidence in the judges' criteria; it is a grant of trust that will constitute a fundamental element of a rule of law. Hence the repeal of Decree-Law no. 477/82, of December 22, has now come into force; This diploma, moreover, had the power to arouse almost unanimity in dissenting opinions.

On another level, the intention was, naturally, present to ensure a proportionate compatibility of the new code with the extravagant legislation that can be linked to the 1929 code until the general modification of that legislation takes place. It takes on the particular problem of squeamishness with regard to the processing of transgressions and misdemeanors that have been maintained in separate legislation, despite the declared movement towards the consolation of these criminal offenses for administrative offense law. The formula found - largely preferable to the revival of the previous code in that it contained a special form for processing such infractions - seems balanced and practicable; nor will it be the eventuality of a return to the common form that will harm the feasibility of the system with regard to the judgment of transgressions and misdemeanors punishable by fines.

Thus: in the use of the authorization granted by Law no. 43/86, of September 26, the government decrees, in accordance with subparagraph b) of no. 1 of Article 201 of the Constitution, the following:

Article 1

The Code of Criminal Procedure published in the annex and which forms an integral part of this diploma is approved.

Article 2

1 - The Code of Criminal Procedure approved by Decree-Law No. 16489, of February 15, 1929, as amended, is revoked.

2 - Legal provisions that contain criminal procedural rules in opposition to those provided for in this code are also revoked, namely the following:

a) Decree-Law No. 35007, of October 13, 1945;

b) Decree-Law No. 31843, of January 8, 1942;

c) Articles 26, 27 and 28 of Decree-Law No. 32171, of July 29, 1942, Decree-Law No. 47749, of June 6, 1967, and Article 28. of Decree-Law No. 48587, of August 27, 1968, all in the part applicable to criminal proceedings;

d) Article 36 of Decree-Law no. 37047, of September 7, 1948;

e) Article 67 of the Highway Code, approved by Decree-Law no. 39673, of May 20, 1954, as amended;

f) Decree-Law No. 45108, of July 3, 1963;

g) Decree-Law no. 605/75, of 3 November, as amended by Decree-Law no. 377/77, of 6 September;

h) Lawno. 38/77, of June 17;

i) Decree-Law no. 377/77, of September 6;

j) Decree-Law No. 477/82, of December 22nd.

Article 3

1 - Transgressions and contraventions provided for in separate legislation will be prosecuted:

a) In the form of a summary process, whenever they are punishable only with a fine or non-detention security measure or even when, not being punishable with a prison sentence of more than six months, even with a fine, the Public Prosecutor's Office understands that in the case Only a fine or non-detention security measure should be specifically applied;

b) In the form of summary proceedings, whenever they are punishable by a prison sentence or detention security measure committed in flagrante delicto and there is no place for summary proceedings;

c) In the form of a common process, in other cases. 2. In the case of transgressions or misdemeanors that must be processed in a summary process, the provisions of the attached code regulating the summary process apply, with the following modifications:

a) The application mentioned in Article 394 of the Code of Criminal Procedure will contain only information aimed at identifying the accused and describing the alleged facts and mentioning the legal provisions violated, the existing evidence and an indication of the proposed sanction;

b) With the notification referred to in paragraph 1 of Article 396 of the Code of Criminal Procedure, the defendant is warned

that he can accept, at a hearing, the sanction proposed by the Public Prosecutor's Office, court fees and costs, which will be specified to him, and that, if he does not accept, he will be subjected to summary judgment;

c) If there is a trial, under the terms of the previous paragraph, the provisions of Articles 385, 389, 390 and 391 will apply, with the necessary modifications. 3. (Repealed).

Article 4

References made in separate legislation to the previous code are considered to have been made to the corresponding provisions of this Code of Criminal Procedure.

Article 5

1 - The proceedings whose investigation is legally committed to the criminal investigation courts will continue there until the conclusion of the investigation.

2 - The Superior Council of the Judiciary and the Attorney General's Office will adopt, in an articulated manner, the measures necessary for the rapid conclusion of the processes referred to in the previous paragraph.

Article 6

The sums in criminal procedural account units, as defined in paragraph h) of paragraph 1 of Article 1 of the code, collected in processes in which the respective conviction is decreed, will have the following destination:

a) 20% to the coffers of the Ministry of Justice;

b) 20% to the Social Reinsertion Institute;

c) 60% to the body to which competence in matters of access to the right is assigned.

Article 7

1 - The Code of Criminal Procedure approved by this diploma and the preceding provisions will come into force on June 1, 1987, but will only apply to proceedings initiated from that date, regardless of the moment in which the offense was committed, continuing the processes pending on that date will be governed until the final and unappealable decision that puts an end to them by the legislation now repealed.

2 - Article 209 of the code approved by this diploma, as well as the revocation decreed by paragraph j) of paragraph 2 of Article 2 of this Decree-Law, are excluded from the provisions of the previous paragraph, which produce effects in the the day immediately following the publication of this diploma, and the cases in which preventive detention was ordered or maintained without warrant under that diploma, now revoked, are made conclusive to the judge so that he, through a reasoned order, can make a decision within fifteen days regarding the subsidythe duration of the arrest or the granting of provisional liberty.

3 - The decision given under the previous number may be appealed, under general terms.

Notes: Sole article, Law no. 17/87 - Official Gazette no. 125/1987, Series I of 1987-06-01 postponed until January 1, 1988, the entry into force of the Code of Criminal Procedure.

Code of Criminal Procedure

Chapter 1

1. The urgency of a systematic and comprehensive review of the criminal procedural system is one of the most consensual topics in contemporary legal experience. Called for by those who follow the doctrine of criminal procedure and eagerly awaited by legal practitioners, the reform of criminal procedure has also persisted as a commitment invariably included in the programs of successive constitutional governments. There is also a widespread belief today that only a new codification of criminal procedural law can represent the beginning of a consistent response to the many and enormous challenges that Portuguese society faces in this area. In fact, any attempt to partially revise the codification still in force could only lead to an increase in complexity and a multiplication of aporias, both in theory and in the application of the law. The previous Code of Criminal Procedure, which came into force in 1929, was characterised by a virtually uninterrupted production of new legal instruments on criminal procedural matters: sometimes with the aim of sanctioning innovations to be included in the codified text itself, and other times to increase the already uncontrollable flow of extravagant laws. Furthermore, these were laws designed in different historical contexts, with different ideological and cultural densities, and, therefore, paying homage to different conceptions of the world and life, of the state and the citizen, of the community and the individual, and bearing centrifugal and often antagonistic political-criminal programmes. The outlined framework was further aggravated by the reforms dictated and introduced by the transformations initiated on 25 April 1974. The result was a criminal procedural system undermined by contradictions, discrepancies and compromising dysfunctions; a system where, in addition to the difficulties of identifying, in the multitude of overlapping regulations, the regime specifically applicable, were added those arising from the impossibility of referencing a coherent system, preordained to the realisation of a clearly envisaged and assumed teleology.

2. The present Code of Criminal Procedure is intended to respond to the imperatives that arise from this context. In order to better understand its spirit and purposes, and as a way of promoting its consensual and widespread acceptance, it is important to highlight some of the principles that were deliberately established as the basis and etymology that legitimizes the technical solutions that were chosen. It is also appropriate, and merely by way of example, to highlight some of these solutions, many of which are innovative in

nature. Before doing so, however, it will be appropriate to explain some of the coordinates that defined the environment in which the reform had to operate and that therefore conditioned the lines of balance and overcoming of often antinomic principles of projection, thus frequently dictating the preference for a certain technical solution among several that were in principle available. For this purpose, a distinction will be made between exogenous and endogenous constraints: the former, arising from Portugal's increasingly intense insertion in supranational communities and organizations and from its increasingly close alignment with the rhythm of the great ideological, cultural, scientific, political-criminal and legal movements that are constantly shaking up and renewing the face of the world; the latter, arising from the national legal experience and the indispensable idiosyncrasies of our historical-cultural universe.

3. Regarding theexogenous actors respects, the comparative law lesson was carefully considered. In particular, an attempt was made to take advantage of the lessons offered by the experience of community countries (Spain, France, Italy, Federal Republic of Germany) with which Portugal maintains a more extensive common legal and cultural heritage; other countries, all of them, committed to a process of profound renewal of criminal procedural institutions. Care was also taken to analyze the results achieved by the extensive criminological investigations carried out in some of those countries and which focus on the actions of the different bodies that make up the formal crime control system. Without advocating or intending a mechanical transposition of such results, the truth is that the consistent political-criminal injunctions that emanate from them should not be ignored, from the perspective of a system committed to maximizing and rationalizing its functioning; committed, in other words, to obviating the high “black figures” and the inequalities they embody and to overcoming the maladjustments and dysfunctionalities between individual instances and between the globally considered system and the environmental community. Particularly relevant to the preparation of this code was the legal and criminal procedural science of the countries mentioned. What is easily understood, it is true that this powerful movement of dogmatic elaboration was due to the progress made in affirming the implications of the basic principles of a democratic and social state of law on a criminal process that wants to be in tune with such principles. The same doctrine must, moreover, be credited with the most consequential efforts in the search for alternatives capable of shaping more effectively, in everyday experience, those principles and the ultimate axiology to which they pay homage. Despicienda was not, lastly, the influence that radiates from a forum with the moral and cultural prestige of the Council of Europe, to which our country is proud to belong. It should be remembered, by the way, that numerous topics of criminal procedure - notably, v. g., for the problems of preventive detention, the guarantees and rights of defendants, accelerated and simplified processes, the legal-procedural position of the victim, the meaning and scope of application of the principle of opportunity, etc. - have been the subject of scientific meetings under their sponsorship and, not infrequently, of recommendations or deliberations by their competent bodies.

4. Among the endogenous constraints, first of all, the importance that this code wanted to attribute to the Portuguese criminal procedural tradition should be highlighted. In effect, efforts were made to ensure that the search for innovation and modernity was not done with an indiscriminate sacrifice of institutions and principles that, despite everything, must be preserved as identifying signs of an autonomous way of being in the world, of making history and to create culture. Paradigmatic in this regard is what happens with the statute of the victim-assistant, which clearly distinguishes us in the context of comparative law and by whose model reform movements in many countries are now beginning to be guided, under the impetus of the most recent criminological-victimological investigations. It is important to mention, secondly, the Constitution of the Republic and the Penal Code - two diplomas that, due to their role in the context of the Portuguese legal order, in many cases drastically narrow the spectrum of available alternatives, while in other cases they predetermine the meaning and scope of the solutions to be enshrined in criminal proceedings. Thus, the Constitution of the Republic elevated, for example, to the category of fundamental rights the principles relating to the basic structure of the criminal process, the limits to preventive detention as a measure that is decidedly subsidiary, the regularity of evidence, the procedural speed compatible with the defense guarantees, assistanceessence of the defender, to the natural judge. In turn, among the constraints arising from the Penal Code, it is possible to highlight, from the outset, that linked to its fidelity to the socializing ideology and which in turn points, for example, to an autonomy, at least relative, of the procedural moment of determining and measuring the penalty. Furthermore, the implications arising from the fact that the Penal Code has defined the compensation, awarded to the injured party as a consequence of a crime, as a benefit of a civil nature are no less obvious and significant; which cannot fail to conflict, for example, with the principle of widespread unofficial arbitration, in force under previous law. Relevant was, thirdly, the representation - which was intended to be as approximate and true as possible - of the main bottlenecks and deviations recorded in the practice of our courts and responsible for the frustration of timely and effective justice. Such dysfunctionalities were mainly diagnosed: in the existence of the instruction, as a necessary phase for the submission of the case to trial in the most serious crimes; in the lack of rules regarding the continuity and discipline of the trial hearing and the invincible anomie of non-compliance with deadlines in general; in a system of appeals that, by overinducing abuse, paradoxically emerged as offering a second level of appeal without, at the same time, guaranteeing dual jurisdiction over the merits; in a plethora of common and special forms of the procedure. Everything, moreover, was worsened by the widespread distrust among citizens regarding the suitability of the formal justice provided, in a process of distancing that spiraled and led to the search for informal solutions of self-protection, effort or vindicta, composition and compensation. private.

Chapter 2

5. To gain the appropriate perspective to understand the basic structure of the process model underlying this code, its fundamental principles and its concrete solutions, it is advisable to begin with a prior reference to the ends or goals that, ultimately, are legitimate expect from criminal proceedings within the framework of a democratic and social rule of law. It is, in effect, the values

and forms of this model of community organization that define the horizon in which the code intends to fit. This assumes, accordingly, the main idea according to which the aim of criminal proceedings is to achieve justice in the case, through procedurally admissible means and in order to ensure the legal peace of citizens. It is known, however, how these three references are valid in the criminal process as autonomous polarizers of universes of values

and generators of principles with inevitably unethical implications. Therefore, from the outset, the possibility of putting in place a procedural system that fully meets the demands arising from each of those three references is ruled out. For the most part, any pretension to unilaterally absolutize any of them must, in fact, be ruled out without further ado - under penalty of opening the door to the most intolerable forms of tyranny or advocating solutions based on the most innocuous procedural ritualism. What is possible, and also - it is important to emphasize - what is desirable, is, therefore, a procedural model preordained to the practical agreement of the three antinomic teleologies, in the search for the achievable and admissible maximization of the respective implications. In the current state of knowledge, and bearing in mind the ballast of historical experience, any demonstration of the antinomies that mediate between, for example, the freedom and dignity of the defendants and the constant search for a material truth or between the addition of efficiency of criminal justice and respect for procedural forms or rites, which present themselves as bulwarks of fundamental rights. The most recent political and social transformations, and even the advancement of more or less committed theoretical reflection, have howeverI hope to emerge new and important lines of cleavage and conflict between the ends of the criminal process. In the first case is the triumph of the modern state of social law, whose consequences in the criminal process (socialization, conciliation, transaction, opportunity, etc.) can drastically collide with the demands anchored in more than two centuries of affirmation of the merely liberal aspect of the state of classical law. Paradigmatic, as far as the second case is concerned, is the antinomy that results from the discovery of the institutional relevance of certain fundamental rights, to the point that the contemporary rule of law assumes them as its own symbolic values. What is translated, v. g., in its inalienability even in the context of criminal proceedings, to publicize its purposes and under the involvement of its formal guarantees. What happens with the prohibitions on proof - which, in obedience to constitutional imperatives, the code expressly enshrines -, whose regime explicitly takes precedence over the consent of the accused and his autonomy, constitutes perhaps the most expressive manifestation, but certainly not the unique, this stance of the rule of law towards fundamental rights. By establishing them as an “institution” and imposing them in a certain way against the holder himself, it is also the “institution” of a fully legitimized criminal process that the modern state seeks to preserve. Reflexively and ultimately, it is its own legitimation that the state seeks to protect.

6. It is, therefore, the antinomies at the level of the very foundations of the criminal process that call for an integrated regime of compromise solutions, precluding the possibility of a system aligned according to the dictates of a unilinear and absolutized logic. The pressures towards an open system become more accentuated, moreover, when two complementary considerations are taken into account: the first contends with the heterogeneity of the reality surrounding the criminal process; the second has to do with the diversity of attitude or ethos specific to the different interaction structures in which the procedural drama is analyzed. In other words, and following the formulation of some contemporary proceduralists at this point, it is possible to inscribe the entire procedural universe in a system of coordinates defined by a horizontal and a vertical axis.

a) Regarding the first axis, it is important not to forget the decisive importance of the distinction between serious crime and petty crime - one of the typical manifestations of modern societies. These are two clearly distinct realities in terms of their criminological explanation, the degree of social harm and the collective alarm they cause. The content of the social reaction in one case and in another cannot, therefore, be completely different, let alone the content of the formal reaction. It is not even by chance that the search for new ways of controlling petty crime represents one of the most striking lines of the current political-criminal debate. Specifically, it is mainly with an eye on this specific area of

criminal phenomenology that, with increasing insistence, we speak in terms of opportunity, fun, informality, consensus, speed. It will not come as a surprise that this code pays a moderate but unequivocal tribute to the reasons behind these political-criminal suggestions. Nor will it be difficult to identify solutions or institutes that are directly relevant to them. Due to its innovative nature and its weight in the economy of the diploma, the possibility of provisional suspension of the process with injunctions and rules of conduct and, above all, the creation of a very summary process - a special form of process aimed at controlling petty crime - deserves special attention. in

terms of effectiveness and speed, without the costs of stigmatization and deepening conflict in the context of a formal hearing.

b) A second axis isestablishes the border between what can be called spaces of consensus and spaces of conflict in the criminal process, although to a large extent overlapping with the previously mentioned - in the treatment of petty crime, consensus solutions must be privileged, while in the case of more serious crime Conversely, solutions must be made viable that involve the recognition and clarification of the conflict - this second distinction has an autonomous meaning. On the one hand, situations abound in the criminal process in which the search for consensus, pacification and stabilizing reaffirmation of norms, based on reconciliation, is valid as an ethical-legal imperative. Expressions of the echo found in this code by such ideas are, among others: the importance given to free and full confession, which can dispense with any further production of evidence; the agreement of several procedural subjects as a presupposition of institutes such as the provisional suspension of the process, the summary procedure, the competence of the single judge to judge abstract cases pertinent to the competence of the collective court, as well as the numerous provisions whose effectiveness is subject to the consent of one or more procedural participants. However, the code does not place the search for consensus in unconditional value. Due to the nature of things, here too absolutization would only be possible at the cost of will, subordinating human life and autonomy to “peace”. Furthermore, effective crime control can often only be achieved through the formalization of real conflict. Paradigmatic of the respect that this consideration deserves for the code is, for example, the possibility for the accused to accept or reject the withdrawal of the complaint or private accusation. The same stance applies, in general, to all the provisions that, as implications of the accusatory system, aim to achieve, as far as possible, the claimed “equality of arms” between the prosecution and the defense. The same could also be said with regard to reinforcing the consistency of the assistant's status, with the clear intention of consolidating the role of one of the protagonists in the field of real conflict.

Chapter 3

7. What has been said will allow for an easier identification and explanation of the most prominent contours of the architecture of the criminal process provided for in this code. Three additional notes will help to highlight many other aspects that shape the outlined system.

a) The first note has to do with the basic structure of the process. By deliberate attachment to one of the most striking achievements of democratic civilizational progress, and by obedience to the constitutional mandate, the code envisaged a process with a basically accusatory structure. However - and without the slightest compromise regarding the authentic demands of the accuser -, he sought to temper the commitment to maximizing accusations with a principle of official investigation, valid for both the purposes of accusation and trial; which represents, moreover, a harmony with our criminal legal-procedural tradition.

b) Secondly, the code decidedly chose to convert the investigation, carried out under the ownership and direction of the Public Prosecutor's Office, into the general and normal phase of preparing the decision to charge or not to charge. In turn, the instruction, which is contradictory in nature and includes an oral debate phase - which implied the abandonment of the distinction between preparatory and contradictory instruction - will only take place when requested by the defendant who wishes to invalidate the prosecution decision, or by the assistant who wishes to contradict the decision not to prosecute. This option is based on the conviction that only in this way will it be possible to overcome one of the biggest and most serious bottlenecks in our current criminal procedural practice. And it is based, on the other hand, on the fact that all procedural acts that directlytion with the fundamental rights of the accused should only be carried out if authorized by the investigating judge and, in some cases, they can only be carried out by him. It should also be noted that, as a direct result of the fundamental option just mentioned, the criminal police bodies are, in the investigation phase, placed under the functional dependence of the Public Prosecutor's Office.

c) Innovative in many ways is, thirdly, the resource regime provided for in this code. With the innovations introduced, we sought to achieve a double effect: enhancing procedural economy from a perspective of speed and efficiency and, at the same time, lending effectiveness to the guarantee contained in a double degree of authentic jurisdiction. To achieve the first aim, an attempt was made to avoid the recognized tendency towards abuse of resources, opening up the possibility of preliminary rejection of the entire appeal due to a manifest lack of foundation. In addition, an attempt was made to simplify the entire system, specifically abolishing the existence, as a rule, of a double level of appeal. Therefore, the Courts of Appeal now hear in the last instance the final decisions of the single judge and the interlocutory decisions of the collective court and the jury, and appeals against the final decisions of these latter courts must be lodged directly with the Supreme Court of Justice. On the other hand, it is from the first instance that we begin to express the guarantee inherent in the existence of dual jurisdiction. In effect, the code is confident in the quality of justice carried out at the level of the 1st instance, for which it does not fail to adopt the measures considered most appropriate and to assume that others - which it is not up to it to edit - will not fail to be enshrined in their own places. Among these, the separation between judges who will act as individual judges and those who belong to collective courts stands out. In the same framework, the expansion of the jurisdiction of jurors, now also extending to matters of law, should be interpreted, combined with the significant reduction in their number, which should be established by the complementary law on the jury. With regard to appeals specifically, the code establishes a regime similar to the idea of

a unitary appeal, in principle identical for the relationship and for the supreme and covering, to the extent possible and convenient, both the question of law and the question of fact. With the same purpose of giving the resource greater consistency, it seeks to counter the tendency to make it a merely routine task carried out on paper, converting it into authentic knowledge of real problems and conflicts, mediated by the motivated intervention of people. That is why resources are subject to the general principle - in fact legally and constitutionally imposed! - the accusatory structure, with the consequent requirement of a hearing where the maxim of orality is respected.

8. Even in the context of a summary presentation, one cannot fail to highlight another of the motivations that was at the forefront of the reform work: the search for greater speed and efficiency in the administration of criminal justice. It is important, however, to note that the search for speed and efficiency did not follow a purely economistic logic of productivity for productivity's sake. The profitability of the implementation of justice is only desired in the name of the direct significance of efficiency in achieving the ends of the criminal process: implementation of justice, protection of legal assets, stabilization of norms, legal peace for citizens. Efficiency is, on the one hand, the mirror of the capacity of the legal system and its potential for prevention, which, as we know, has much more to do with the readiness and safety of criminal reactions than with their more serious nature. or less drastic. The image of efficiency constitutes, on the other hand, the most effective antidote against resorting to spontaneous and informal forms of self-protection or compensation.ment, catalysts for conflicts and violence that are difficult to control. But efficiency - in the sense of reducing black figures and the inequalities to which they obey - can also be valid as a guarantee of the equality of the law in action, a fundamental criterion of its material legitimation and, therefore, of its acceptance and collective internalization. Furthermore, speed is also required due to the consideration of the defendant's own interests, and the fact that the constitution, under the influence of the European convention on human rights, has granted it the status of an authentic fundamental right should not be taken for granted. . It is therefore necessary to reduce to a minimum the duration of a process that always involves compressing the legal sphere of a person who may be - and even has to be presumed - innocent. How must we also prevent the dangers of stigmatization and irreversible adulteration of the defendant's identity, which could culminate in commitment to a criminal career. Furthermore, the procedural acceleration will result in the defendant's favor the more it has in reverse - as is the case in the present code - an effective reinforcement of his procedural position.

9. As can be easily intuited, the purpose of procedural acceleration already emerges in some of the changes and innovations mentioned in other contexts. In addition to them, and always as a mere example, others may be mentioned: some directly preordained to procedural acceleration, others presenting at least an unquestionable value in this sense. Directly in favor of procedural acceleration are undoubtedly: the introduction of an autonomous incident of process acceleration; the new discipline in terms of deadlines, with agreements that are expected to be effective; the power of discipline and direction granted to judicial authorities, maximum to the judge at the trial hearing stage; the structuring of this audience and its development in terms of continuity and reinforced concentration; the simplification and de-bureaucratization of numerous procedural acts, particularly notifications. The same effect is expected from the careful definition, delimitation and articulation of the competence of the various control bodies, such as, for example, the Public Prosecutor's Office and the judge, especially the investigating judge, thus preventing possible conflicts and delays, inevitably generating delays and delay. It is also to the idea of

acceleration that the substantial reduction in process forms must be attributed to a large extent. In fact, in addition to a single form of common procedure (involving only the particularities imposed by the fact that the process takes place before a single judge, a collective court or a jury court), only two forms of special procedure are foreseen: the summary and summary. In this regard, the form of special process whose absence will be most noticeable is naturally that of the absentee process. The code decidedly chose to avoid the inconveniences of the traditional absentee process, namely from a perspective of discouraging absence, favoring an articulated set of drastic measures to compress the patrimonial and business capacity of the absentee, which is expected to be sufficient and effective.

10. Finally, the status of the different procedural subjects and participants is another area where changes are, in addition to being less obvious, equally widespread. In general, they operated in three directions: in a more careful legal delimitation; in an expansion and reinforcement of the powers of the bodies of the different formal control instances, in order to effectively carry out the tasks assigned to them, and in strengthening the legal position of the accused. The most precise definition of the relative powers of the different procedural authorities is, from the outset, dictated by obedience to the demands of the accusatory principle. On the other hand, the expansion of the means at its disposalThis is due to the need to maximize efficiency and the purpose of safeguarding the prestige of procedural bodies in their relations with the community, in order to more fully comply with the obligations of collaboration in the implementation of criminal justice. Along these lines are the so-called police precautionary measures and the coercive and property guarantee measures that the judge, the Public Prosecutor's Office and the criminal police can resort to, in the cases and under the terms specifically provided for. It should be remembered that the Public Prosecutor's Office is granted ownership and direction of the investigation, as well as exclusive competence for the promotion of proceedings: hence it is attributed, not the status of a party, but that

of an authentic judiciary, subject to the strict duty of objectivity. When redefining the defendant's status, the care and a certain solemnity that surrounds its formal constitution begins to stand out. On the other hand, it will not be difficult to see that the code regime, globally considered, results in an unquestionable increase and consolidation of the defendant's procedural rights. Here too, moreover, the uncompromising respect for the accusatory principle leads the code to adopt solutions that come close to an effective “equality of arms”, as well as the preclusion of all measures that conflict with the personal dignity of the accused. A final reference deserves, in this context, the provisions relating to coercive measures - a category that includes, among others, the figure of preventive detention. On the one hand, the code subjects all these measures to the principles of legality, proportionality and necessity. On the other hand, it broadens the respective spectrum, introducing, alongside the already classic coercive measures, new modalities, such as, for example, the obligation to remain in the home. This expansion allows for greater flexibility in choosing concretely applicable solutions, with respect for the dictates of proportionality and necessity. But it allows, above all, the effective implementation of the constitutional principle of subsidiarity of preventive detention, in honor of which, moreover, the code extinguishes the category of non-bailable crimes.

Chapter 4

11. It is thought that, in the way briefly described, the code presented below could constitute a fundamental piece of dialogue, always open and always renewed, between the liberal aspect and the social aspect of the democratic rule of law, between the justice and efficiency in the application of criminal law, among the requirements of community security and respect for people's rights. If this is so, the Code of Criminal Procedure - the essential missing stone in the renewed edifice of our criminal legislation - can legitimately be expected to fulfill the decisive role assigned to it in the immense task of controlling and controlling crime.

Preliminary and General Provisions

Article 1 - Legal definitions

For the purposes of the provisions of this code, the following are considered:

a) Crime: the set of assumptions on which the application of a criminal sentence or security measure to the agent depends;

b) Judicial authority: the judge, the investigating judge and the Public Prosecutor's Office, each in relation to the procedural acts that fall within their competence;

c) Criminal police bodies: all police entities and agents responsible for carrying out any acts ordered by a judicial authority or determined by this code;

d) Criminal police authority: police directors, officers, inspectors and sub-inspectors and all police employees whose respective laws recognize that qualification;

e) Suspect: any person for whom there is evidence that he has committed or is preparing to commit a crime, or who has participated or is preparing to participate in it;

f) Substantial change in the facts: any change that haswith the effect of imputing the defendant of a different crime or increasing the maximum limits of applicable sanctions;

g) Social report: information on the family and socio-professional integration of the accused and, possibly, the victim, prepared by social reintegration services, with the aim of assisting the court or judge in understanding the personality of the accused, for the purposes and in the cases provided for in this diploma;

h) Information from social reintegration services: response to specific requests about the personal, family, school, work or social situation of the defendant and, possibly, the victim, prepared by social reintegration services, with the objective referred to in the previous paragraph, to the effects and in the cases provided for in this diploma.

i) 'Terrorism' means conduct that comprises the crimes of terrorist offenses, offenses related to a terrorist group, offenses related to terrorist activities and terrorist financing;

j) 'Violent crime' means conduct that intentionally targets life, physical integrity, personal freedom, sexual freedom and self-determination or public authority and is punishable by a maximum prison sentence of 5 years or more;

l) 'Especially violent crime' means the conduct set out in the previous paragraph punishable by a maximum prison sentence of 8 years or more; m) 'Highly organized crime' means conduct that includes crimes of criminal association, trafficking in human organs, human trafficking, arms trafficking, trafficking in drugs or psychotropic substances, corruption, influence peddling, economic participation in business or money laundering.

Article 2 - Legality of the process

The application of criminal penalties and security measures may only take place in accordance with the provisions of this code.

Article 3 - Subsidiary application

The provisions of this code are subsidiarily applicable, unless otherwise provided by law, to criminal proceedings regulated by special law.

Article 4 - Integration of gaps

In omitted cases, when the provisions of this code cannot be applied by analogy, the rules of civil procedure that are harmonized with

criminal proceedings are observed and, in their absence, the general principles of criminal procedure apply.

Article 5 - Application of criminal procedural law over time

1 - The criminal procedural law is immediately applicable, without prejudice to the validity of acts carried out under the previous law.

2 - Criminal procedural law does not apply to proceedings initiated prior to its coming into force when its immediate applicability could result in:

a) Significant and still avoidable worsening of the defendant's procedural situation, namely a limitation of his right of defense; or

b) Breaking the harmony and unity of the various acts of the process.

Article 6 - Application of criminal procedural law in space

Criminal procedural law is applicable throughout Portuguese territory and, as well, in foreign territory within the limits defined by treaties, conventions and rules of international law.

Article 7 - Sufficiency of criminal proceedings

1 - The criminal process is carried out independently of any other and all issues that are relevant to the decision of the case are resolved in it.

2 - When, in order to determine the existence of a crime, it is necessary to judge any non-criminal issue that cannot be conveniently resolved in the criminal proceedings, the court may suspend the proceedings so that this issue can be decided in the competent court.

3 - Suspension may be requested, after the indictment or request to open the investigation, by the public prosecutor, the assistant or the accused, or be ordered ex officio by the court. The suspension cannot, however, prejudice thecarrying out urgent evidentiary measures.

4 - The court sets the suspension period, which can be extended up to one year if the delay in the decision is not attributable to the assistant or the defendant. The public prosecutor can always intervene in the non-criminal process to promote its rapid progress and inform the criminal court. Once the deadline has passed without the question being resolved, or if the action has not been filed within a maximum period of one month, the matter is decided in criminal proceedings.