

This file corresponds to part 2, book 9 (Of resources), title 1 (Of ordinary resources) of the Portuguese criminal procedure code.

Chapter I - General Principles

Article 399 - General Principle

It is permitted to appeal judgments, sentences and orders whose non-appealability is not provided for by law.

Article 400 - Decisions that do not admit appeal

1 - Appeal is not admissible:

- a) Orders for mere expediency;
- b) Decisions that order acts dependent on the free resolution of the court;
- c) Of judgments handed down, on appeal, by the relations, which do not know, in the end, the object of the process, except in cases where, innovatively, they apply measures of coercion or property guarantee, when in the first instance it has been decided not apply any measure other than that provided for in article 196;
- d) Of acquittal judgments handed down, on appeal, by the relations, except in the case of a conviction in the first instance involving a prison sentence of more than 5 years;
- e) Judgments handed down, on appeal, by the relations, which impose a non-custodial sentence of liberty or a prison sentence not exceeding 5 years, except in the case of an acquittal decision in the first instance;
- f) Convicting judgments handed down, on appeal, by the relations, which confirm the decision of the first instance and impose a prison sentence of no more than 8 years;
- g) In other cases provided for by law.

2 - Without prejudice to the provisions of articles 427 and 432, the appeal against the part of the sentence relating to civil compensation is only admissible provided that the value of the request is greater than the jurisdiction of the appealed court and the contested decision is unfavorable to the recurring amount exceeding half of this limit.

3 - Even if an appeal regarding criminal matters is not admissible, an appeal may be lodged against the part of the sentence relating to civil compensation.

Article 401 - Legitimacy and Interest in Acting

1 - They have the right to appeal:

- a) The Public Prosecutor's Office, of any decisions, even if in the exclusive interest of the defendant;
- b) The defendant and the assistant, of decisions made against them;
- c) The civil parties, in terms of the decisions made against each one;
- d) Those who have been ordered to pay any amounts, under the terms of this Code, or have to defend a right affected by the decision.

2 - Anyone who is not interested in taking action cannot appeal.

Article 402 - Scope of the Appeal

1 - Without prejudice to the provisions of the following article, the appeal filed against a sentence covers the entire decision.

2 - Unless it is based on strictly personal reasons, the appeal filed:

- a) By one of the defendants, in the case of co-participation, it benefits the others;
- b) For the defendant, it benefits the person responsible;
- c) By the civilly responsible party, it benefits the defendant, even for criminal purposes.

3 - The appeal filed against just one of the defendants, in cases of co-payment, does not prejudice the others.

Article 403 - Limitation of Appeal

1 - It is permissible to limit the appeal to a part of the decision when the appealed part can be separated from the non-appealed part, in order to make an autonomous assessment and decision possible.

2 - For the purposes of the provisions of the previous paragraph, the part of the decision that refers to:

- a) Criminal matters;
- b) Civil matters;
- c) In the case of a combination of crimes, for each of the crimes;
- d) In the case of a criminal unit, the question of culpability, in relation to that which refers to the question of determining the sanction;
- e) In the case of criminal participation, to each of the defendants, without prejudice to the provisions of article 402, no. 2, subparagraphs a) and c);
- f) Within the issue of determining the sanction, for each of the penalties or security measures.

3 - Limiting the appeal to a part of the decision does not prejudice the duty to remove from its origin the consequences legally imposed in relation to the entire appealed decision.

Article 404 - Subordinate Appeal

1 - In the event of an appeal filed by one of the civil parties, the opposing party may file a cross-appeal.

2 - The cross-appeal is filed within 30 days from the date of notification referred to in paragraphs 6 and 7 of article 411.

3 - If the first appellant withdraws from the appeal, it becomes ineffective or the court is not aware of it, the cross-appeal becomes ineffective.

Article 405 - Complaint Against Order that Does Not Admit or Withhold the Appeal

1 - The appellant may complain to the president of the court to which the appeal is directed against the order that does not admit or retains the appeal.

2 - The complaint is presented at the secretariat of the appealed court within ten days from the notification of the order that did not admit the appeal or the date on which the appellant became aware of the withholding.

3 - In the application, the complainant sets out the reasons that justify the admission or immediate raising of the appeal and indicates the elements with which he intends to inform the complaint.

4 - The decision of the president of the superior court is final when confirming the rejection order. Otherwise, it does not bind the court of appeal.

Article 406 - Uploading in Files and Separately

1 - The appeals lodged against decisions that put an end to the case and those that should be filed with them are included in the files themselves.

2 - Resources not referred to in the previous paragraph that must be raised immediately will be raised separately.

Article 407 - Moment of Ascent

1 - Resources whose retention would make them absolutely useless are immediately raised.

2 - The appeals filed will also be raised immediately:

- a) Decisions that put an end to the case;
- b) Decisions subsequent to those referred to in the previous paragraph;
- c) Decisions that apply or maintain measures of coercion or property guarantee, under the terms of this Code;
- d) Decisions that condemn the payment of any amounts, under the terms of this Code;
- e) An order in which the judge does not recognize an impediment against him;
- f) An order that denies the Public Prosecutor's Office legitimacy to continue the process;
- g) An order that does not allow the appointment of an assistant or the intervention of a civil party;
- h) Order rejecting the request for the opening of an investigation;
- i) The investigative decision, without prejudice to the provisions of article 310;
- j) Order rejecting the request to submit a defendant suspected of having a mental illness to the respective expert examination.
- k) Order issued under the provisions of paragraphs 2, 3 and 5 of article 328-A.

3 - When they should not be raised immediately, the appeals are raised and are instructed and judged together with the appeal filed against the decision that brought the case to an end.

Article 408 - Appeals with Suspensive Effect

1 - The following have a suspensive effect on the process:

- a) Appeals filed against final sentencing decisions, without prejudice to the provisions of article 214;
- b) The appeal against the pronouncement order, without prejudice to the provisions of article 310.

2 - The effects of the contested decision are suspended: a) Appeals filed against decisions ordering the payment of any amounts, under the terms of this Code, if the appellant deposits the amount;

- b) Appeal against the order that deems the bond breached.
- c) The appeal for an order ordering the execution of the arrest, in case of non-compliance with a non-custodial sentence;
- d) The appeal against an order that considers the appeal against the final sentencing decision to be ineffective, due to lack of payment of a court fee.

3 - The appeals provided for in paragraph 1 of the previous article have a suspensive effect on the process when the validity or effectiveness of subsequent acts depend on them, suspending the appealed decision in other cases.

Article 409 - Prohibition of Reformatio in Pejus

1 - An appeal against a final decision is lodged only by the accused, by the Public Prosecutor's Office, in the former's exclusive interest, or by the accused and the Public Prosecutor's Office in the former's exclusive interest, the higher court cannot modify, in its type or measure, the sanctions contained in the appealed decision, to the detriment of any of the defendants, even if not appellant.

2 - The prohibition established in the previous paragraph does not apply to the increase in the amount fixed for each day of the fine, if the economic and financial situation of the defendant has in the meantime improved significantly.

Chapter II - Unitary Processing

Article 410 - Grounds for the Appeal

1 - Whenever the law does not restrict the court's cognition or its powers, the appeal may be based on any issues that the appealed decision could have been aware of.

2 - Even in cases where the law restricts the appeal court's cognition to matters of law, the appeal may have the following grounds, as long as the defect results from the text of the contested decision alone or in conjunction with the rules of common experience:

- a) The insufficiency of the proven fact to decide;
- b) The irremediable contradiction of the reasons or between the reasons and the decision;
- c) Egregious error in the assessment of the evidence.

3 - The appeal may also be based, even if the law restricts the appeal court's cognition to matters of law, on non-compliance with a requirement imposed under penalty of nullity which should not be considered remedied.

Article 411 - Filing and Notification of Appeal

1 - The deadline for filing an appeal is 30 days and includes:

- a) From notification of the decision;
- b) In the case of a sentence, its deposit at the secretariat;
- c) In the case of an oral decision reproduced in minutes, from the date on which it was given, if the interested party is or should be considered present.

2 - An appeal against a decision given at a hearing may be lodged by a simple statement in the minutes.

3 - The request to lodge an appeal is always motivated, under penalty of non-admission of the appeal, and the motivation, in the case of an appeal filed by declaration in the minutes, may be presented within 30 days from the date of filing.

4 - (Revoked.)

5 - In the application for filing an appeal, the appellant may request that a hearing be held, specifying the reasons for the appeal that he or she wishes to see debated.

6 - The request for interposition or the motivation are notified to the remaining procedural subjects affected by the appeal, after the order referred to in paragraph 1 of article 414, and the necessary number of copies must be delivered.

7 - The request to lodge an appeal that affects the defendant judged in absence, or the motivation, prior to the notification of the sentence, are notified to the defendant when it is notified to him, in accordance with paragraph 5 of article 333.

Article 412.⁹ - Reason for the Appeal and Conclusions

1 - The motivation specifically states the grounds for the appeal and ends with the formulation of conclusions, deduced by articles, in which the appellant summarizes the reasons for the request.

2 - Regarding matters of law, the conclusions also indicate:

- a) Legal norms violated;
- b) The sense in which, in the appellant's opinion, the court under appeal interpreted each rule or how it applied it and the sense in which it should have been interpreted or how it should have been applied; It is
- c) In case of error in determining the applicable standard, the legal standard that, in the appellant's opinion, should be applied.

3 - When challenging the decision given on matters of fact, the appellant must specify:

- a) The specific points of fact that you consider incorrectly judged;
- b) The concrete evidence that requires a decision different from that of the defendant;
- c) The tests that must be renewed.

4 - When the evidence has been recorded, the specifications provided for in paragraphs b) and c) of the previous paragraph are made by reference to what is recorded in the minutes, in accordance with the provisions of paragraph 3 of article 364, and the appellant must indicate specifically the passages on which the objection is based.

5 - If there are retained resources, the appellant must specify, in the conclusions, which ones remain of interest.

6 - In the case provided for in paragraph 4, the court proceeds to listen to or view the passages indicated and others that it considers relevant for discovering the truth and the good decision of the case.

Article 413 - Response

1 - The procedural subjects affected by the filing of the appeal may respond within 30 days from the notification referred to in paragraph 6 of article 411.

2 - (Revoked.)

3 - The response is notified to the procedural subjects affected by it, and must be delivered in the necessary number of copies.

4 - The provisions of paragraphs 3 to 5 of article 412 are correspondingly applicable.

Article 414 - Admission of the Appeal

1 - Once the appeal is lodged and the motivation is attached, or after the deadline for this purpose has expired, the judge issues an order and, in the case of admission, determines its effect and the increase regime.

2 - The appeal is not admitted when the decision cannot be appealed, when it is filed out of time, when the appellant does not meet the necessary conditions to appeal, when the motivation is lacking or, in the absence of conclusions, when the appellant does not present them within 10 days after being invited to do so.

3 - The decision that admits the appeal or that determines its effect or the increase regime does not bind the higher court.

4 - If the appeal is not filed against a decision that ultimately determines the subject matter of the case, the court may, before ordering the case to be sent to the higher court, uphold or repair that decision.

5 - If defendants are in prison, this circumstance must be mentioned, indicating the date of deprivation of liberty and the prison establishment where they are held.

6 - If the appeal is raised separately, the judge must verify whether it is equipped with all the elements necessary for a good decision in the case, determining, if necessary, the extraction and joining of a certificate of the relevant procedural documents.

7 - If the appeal is filed and there are defendants deprived of their liberty, the court, before sending the case to the higher court, orders the extraction of a certificate of the procedural documents necessary for its re-examination.

8 - If there are several appeals against the same decision, some of which deal with matters of fact and others exclusively with matters of law, they are all judged accordingly together by the court competent to hear the matter of fact.

Article 415 - Withdrawal

1 - The Public Prosecutor's Office, the accused, the assistant and the civil parties may withdraw from the appeal filed, until the case is concluded with the rapporteur for preliminary examination.

2 - Withdrawal is made by request or by termination of the process and is verified by order of the rapporteur.

Article 416 - View of the Public Prosecutor's Office

1 - Before being presented to the rapporteur, the process goes to the Public Prosecutor's Office at the appeal court.

2 - If a hearing has been requested under the terms of paragraph 5 of article 411, the visit to the Public Prosecutor's Office is only intended to become aware of the process.

Article 417.⁹ - Preliminary Examination

1 - Once the Public Prosecutor's Office has received a visa, the process is submitted to the rapporteur for preliminary examination.

2 - If, in the light referred to in the previous article, the Public Prosecutor's Office does not limit itself to affixing its approval, the defendant and other procedural subjects affected by the filing of the appeal are notified to respond within 10 days, if they wish. .

3 - If it is not possible to fully or partially deduce the indications provided for in paragraphs 2 to 5 of article 412 from the conclusions of the appeal, the rapporteur invites the appellant to complete or clarify the conclusions formulated, within a period of 10 days, under penalty of the appeal being rejected or not being known in the affected party. If the motivation for the appeal does not contain the conclusions and the invitation referred to in paragraph 2 of article 414 has not been made, the rapporteur invites the appellant to present them within 10 days, under penalty of the appeal being rejected.

4 - The improvement provided for in the previous paragraph does not allow changing the scope of the appeal that has been established in the motivation.

5 - In the case provided for in paragraph 3, the procedural subjects affected by the filing of the appeal are notified of the submission of an addition or clarification by the appellant, and may respond within 10 days.

6 - After preliminary examination, the rapporteur issues a summary decision whenever:

a) Any circumstance prevents knowledge of the appeal;

b) The appeal must be rejected;

c) There is a reason to extinguish the procedure or criminal liability that puts an end to the process or is the only reason for the appeal; or

d) The issue to be decided has already been judicially assessed in a uniform and repeated manner.

7 - When the appeal cannot be judged by summary decision, the rapporteur decides in the preliminary examination:

a) Whether the effect attributed to the resource should be maintained;

b) If there are tests to be renewed and people who should be summoned.

8 - A complaint may be filed for the verification of the orders issued by the rapporteur under the terms of paragraphs 6 and 7.

9 - When the appeal must be judged in conference, the rapporteur prepares a draft judgment within 15 days from the date on which the process is concluded under the terms of paragraphs 1, 2 or 5.

10 - The complaint provided for in paragraph 8 is assessed together with the appeal, when the latter must be judged in conference.

Article 418 - Visas

1 - Once the preliminary examination has been completed, the process, accompanied by the draft ruling if applicable, goes to the president and deputy judges for approval and then to the conference, in the first session that takes place.

2 - Whenever the nature of the process and the availability of technical means allow, copies are made so that visas can be issued simultaneously.

Article 419 - Conference

1 - The president of the section, the rapporteur and two deputy judges take part in the conference.

2 - The discussion is led by the president, who, however, only votes, to break a tie, when a majority cannot be formed with the votes of the rapporteur and deputy judges.

3 - The appeal is judged in conference when:

a) A complaint has been filed regarding the summary decision provided for in paragraph 6 of article 417;

b) The contested decision does not ultimately address the subject matter of the case, in accordance with subparagraph a) of paragraph 1 of article 97; or

c) A hearing has not been requested and it is not necessary to renew the evidence under the terms of article 430.

Article 420 - Rejection of the Appeal

1 - The appeal is rejected whenever:

a) It is manifestly unfounded;

b) There is a reason that should have determined their non-admission under the terms of paragraph 2 of article 414; or

c) The appellant does not present, complete or clarify the conclusions drawn and this defect affects the entire appeal, in accordance with paragraph 3 of article 417.

2 - In the event of rejection of the appeal, the decision is limited to identifying the appealed court, the process and its subjects and summarily specifying the reasons for the decision.

3 - If the appeal is rejected, the court orders the appellant, if it is not the Public Prosecutor's Office, to pay an amount between three and ten UCs.

Article 421 - Continuation of the Process

1 - If the process is to continue, the conclusion is opened to the president of the section, who designates the hearing for one of the following twenty days, determines the people to be summoned and orders the visas to be completed, if applicable.

2 - The Public Prosecutor's Office, the defender, the representatives of the assistant and the civil parties are always summoned to the hearing.

3 - Except in the case of the Public Prosecutor's Office, notifications are made by post.

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

Article 422 - Postponement of the Hearing

1 - The non-appearance of people summoned only results in the postponement of the hearing when the court considers it essential to the fulfillment of justice.

2 - If the defender does not appear and there is no need for postponement, the court appoints a new defender. The provisions of article 67, paragraph 2, are correspondingly applicable.

3 - No more than one postponement of the hearing is permitted.

Article 423.⁹ - Hearing

1 - After the president has declared the hearing open, the rapporteur introduces the debates with a summary statement about the object of the appeal, in which he sets out the issues that the court believes deserve special examination.

2 - The rapporteur's presentation is followed by renewal of the test, when necessary.

3 - The president then gives the floor, for arguments, to the representatives of the appellant and the defendants, each for a period not exceeding thirty minutes, extendable in cases of particular complexity.

4 - There is no place for a reply, without prejudice to the defender being granted the floor, before the end of the hearing, for another fifteen minutes, if he was not the last to speak.

5 - The provisions relating to the trial hearing in the first instance are subsidiarily applicable.

Article 424 - Deliberation

1 - Once the hearing is over, the court meets to deliberate.

2 - The provisions on deliberation and voting in judgments are correspondingly applicable, taking into account the nature of the issues that constitute the object of the appeal.

3 - Whenever there is a non-substantial change in the facts described in the contested decision or in the respective legal qualification that is not known to the accused, he or she is notified so that, if he wishes, he can make a statement within 10 days.

Article 425 - Judgment

1 - Once the deliberation and voting has concluded, a document is drawn up order by the rapporteur or, if he has expired, by the first deputy judge who has expired.

2 - Voting declarations are admissible.

3 - If it is not possible to issue the judgment immediately, the president publicly sets the date, within the next 15 days, for the publication of the decision, after recording it in a book of memories signed by the judges.

4 - The provisions of articles 379 and 380 are correspondingly applicable to judgments handed down on appeal, with the judgment still being null and void when issued against the loser, or without the necessary due date.

5 - The acquittal rulings set out in article 400, no. contested.

6 - The judgment is notified to the appellants, the defendants and the Public Prosecutor's Office.

7 - The deadline for filing an appeal starts from notification of the judgment.

Article 426 - Return of the Case for New Trial

1 - Whenever, due to the defects referred to in subparagraphs of paragraph 2 of article 410, it is not possible to decide the case, the court of appeal determines that the case be sent back for a new trial in relation to the entire subject matter of the case or to issues specifically identified in the order for reference.

2 - The referral ordered by the Supreme Court of Justice, within the scope of an appeal filed, in the 2nd instance, against the relationship ruling is made to this court, which allows the renewal of the evidence or sends the case back for a new trial in the 1st instance. instance.

3 - If there are related cases, the higher court will terminate the connection and order the separation of one or some of them for the purposes of a new trial when the defect referred to in the previous paragraph falls solely on them.

4 - If an appeal is filed against the new decision to be given in the appealed court, it is always distributed to the same rapporteur, except in cases of impossibility.

Article 426-A - Jurisdiction for the New Trial

1 - When the case is remanded, the new trial is the responsibility of the court that carried out the previous trial, without prejudice to the provisions of article 40, or, if this is not possible, the court that is closest, of the same category and composition as the court that issued the contested decision.

2 - When there is more than one court of the same category and composition in the same district, the judgment is the responsibility of the court resulting from the distribution.

Chapter III - Appeals to Relations

Article 427 - Appeal to the Relationship

Except for cases in which there is a direct appeal to the Supreme Court of Justice, the appeal against the decision given by the court of first instance is included in the relationship.

Article 428 - Powers of Cognition

Relationships know in fact and in law.

Article 429 - Composition of the Court at Hearing

1 - The president of the section, the rapporteur and two deputy judges will speak at the hearing.

2 - Whenever possible, judges who have intervened in the conference will remain at the hearing.

Article 430 - Renewal of the Test

1 - When it is necessary to know the facts and the law, the relationship allows the renewal of the evidence if the defects referred to in paragraphs 2 of article 410 are found and there are reasons to believe that it will allow the process to be avoided.

2 - The decision that admits or refuses the renewal of the evidence is definitive and establishes the terms and extent to which the evidence produced in the first instance may be renewed.

3 - The renewal of the test takes place at a hearing.

4 - The accused is always summoned to the hearing, but, if he has been regularly summoned, his absence does not result in place for postponement, unless the court decides otherwise.

5 - The provisions regarding discussion and judgment in the first instance are correspondingly applicable.

Article 431 - Modifiability of the Appealed Decision

Without prejudice to the provisions of Article 410, the decision of the court of first instance on a matter of fact may be modified:

- a) If the case file contains all the evidence on which it was based;
- b) If the evidence has been challenged under the terms of Article 412.3; or
- c) If the evidence has been renewed.

Chapter IV - Appeal to the Supreme Court of Justice

Article 432 - Appeal to the Supreme Court of Justice

1 - An appeal may be lodged with the Supreme Court of Justice:

- a) Against decisions of the appeals courts issued in the first instance, exclusively seeking to re-examine the legal matter or on the grounds provided for in paragraphs 2 and 3 of article 410;
- b) Against decisions that are not unappealable issued by the appeals courts, on appeal, under the terms of article 400;
- c) Against final judgments issued by the jury court or the collective court that impose a prison sentence of more than 5 years, exclusively seeking to re-examine the legal matter or on the grounds provided for in paragraphs 2 and 3 of article 410;
- d) Against interlocutory decisions that must be heard with the appeals referred to in the previous paragraphs. 2 - In the cases referred to in paragraph c) of the previous number, no prior appeal to the court of appeal is admissible, without prejudice to the provisions of paragraph 8 of article 414.

Article 433 - Other Cases of Appeal

An appeal may also be lodged with the Supreme Court of Justice in other cases specifically provided for by law.

Article 434 - Powers of Cognizance

An appeal lodged with the Supreme Court of Justice is exclusively for the purpose of re-examining a point of law, without prejudice to the provisions of paragraphs a) and c) of paragraph 1 of article 432.

Article 435 - Hearing

At the hearing, the court shall consist of the president of the section, the rapporteur and two assistant judges.

Article 436 - Change in the Composition of the Court

If it is not possible for the judges who took part in the conference to participate in the hearing, other judges shall be called, appointing a new rapporteur or completing the visas.