Roadmap for DPP Practical Cases

Jurisdiction of the Court

First instance courts can be singular, collective or jury. There are two types of competence distribution criteria, quantitative and qualitative criteria. We meet 2 criteria:

Quantitative criterion: it is a generic and subsidiary criterion, which pays attention to the criminal framework of the crime. To determine the abstractly applicable penalty, Art.15 tells us that all circumstances that may increase the legal maximum of the penalty to be applied must be taken into account.

Qualitative criteria: take into account specific characteristics of crimes, which means that they must be tried in a single, collective or, possibly, jury court.

1st See the rule that provides for the crime and the respective penal framework.

2nd Check if it fits any qualitative criteria:

* 16th/2 a) - Book II, title V, chapter II: 347th-358th single court
* 14th/1 - Book II, title V, chapter I: 308th-346th collective court
* 14th/1 - Book II, title III: 239th-246th collective court
* 14.º/2 a) - Intentional crimes or crimes aggravated by the result, whose death is an element of the collective court type

3º If it does not fit, apply the quantitative criterion (which will, therefore, be subsidiary)

The. 14.º/2 b) - crimes with an abstractly applicable maximum penalty of more than 5 years in prison, even when, in the case of a combination of infractions, the maximum limit corresponding to each crime is lower - collective court

B. 16.º/2 b) - crimes with an abstractly applicable maximum sentence equal to or less than 5 years - single court

w. 16/3: in the case of a crime whose abstractly applicable maximum penalty is greater than 5 years, even a combination of crimes, if the MP understands that the concretely applicable sentence should not exceed 5 years - single court

When we are faced with this situation, then the competent court is the singular one, with the consequence that this court is limited (16.º/4), in the sense of not being able to impose a sentence exceeding 5 years. As is easily understood, there is a problem of separation of powers here, between the MP (219th CRP) and the Courts (Art. 202nd/1 CRP), that is, a constitutional problem between those who investigate (MP) and who applies the law (courts). And, naturally, the MP, the body that investigates, cannot limit the Court in applying penalties, as is the case, raising problems of unconstitutionality.

Therefore:

Single Court

Processes that concern crimes whose abstractly applicable maximum penalty is equal to or greater than 5 years in prison (art. 16.º/2/b) - quantitative criterion.

Processes that concern crimes against public authority (art. 16.º/2/a CPP, 347.º-358.º CP), as this circumstance of being crimes against public authority justifies the trial by just one judge . The assessment and valuation of evidence is especially facilitated, meaning that crimes punishable by a prison sentence of more than 5 years fall within the jurisdiction of the single court (art. 350.º/1, art. 354.º CP).

After Law No. 20/2013, the single court started to judge other crimes punishable by a prison sentence of more than 5 years, in case of trial in summary proceedings - flagrante delicto (art. 381.º; art. 16.º/2/c CPP).

Declaration of unconstitutionality of the summary trial of crimes within the jurisdiction of the collective court. Law 1/2016: legal consecration of this declaration of unconstitutionality (if there was no declaration of unconstitutionality, only the summary process and single court would apply).

Collective Court

Cases that, although they should not be judged by a single court (art. 16.º/2/a and 3), under the terms of art. 14.º/2/b (maximum sentence is more than 5 years) and art. 77.º/2 - quantitative criterion. If the abstractly applicable sentence is greater than 8 years, the collective court is only competent if the intervention of the jury court is not required (13.º/2).

Processes that, while not being judged by a jury, concern crimes against cultural identity and personal integrityoal, against State security or violations of international humanitarian law (art. 14.º/1 CPP, arts. 240.º, 243.º-245.º, 308.º, 316.º-343.º CP) and cases that, although they should not be judged by a single court, concern intentional or aggravated crimes due to the result (14.º/2/a) - qualitative criterion.

4th Can you go to jury trial?

The. 13.º/1: Book II, title V, chapter I: 308.º-346.º request from the MP, assistant or defendant

B. 13/2: competent court is the collective and the maximum penalty abstractly applicable to the crime is greater than 8 years in prison request from the MP, assistant or defendant

Jury Court

Cases that, although they should not be judged by a single court (art. 16/2) are in art. 13.º/1 and 2 (reference to articles 240.º,

243.º-245.º, 308.º, 316.º-343.º CP). The jury only intervenes at the irreversible request of the MP, the assistant or the accused (art. 13/1, 2 and 5).

There may always be other types of process besides the common process, characterized by their speed.

A. Summary Process (articles 381 and ss. CPP)

Regarding the assumptions:

Arrest in flagrante delicto by a judicial authority or police entity; or by any person who delivers the detainee to one of the above entities within 2 hours of arrest;

Crime punishable with a maximum abstractly applicable penalty equal to or less than 5 years in prison. It may have an abstractly applicable maximum penalty of more than 5 years, if the MP considers that a penalty of more than 5 years should not be specifically applied, through the mechanism of art. 16th/3.

Law 20/2013 introduced that judgment in summary form was always the responsibility of a single court (16.º/2 c)) and that this special form was applicable to any crime, even if punishable by more than 5 years in prison (previous wording of art. 381.º/1 and 2). These rules were declared unconstitutional, because crimes within the jurisdiction of the collective court cannot be judged in summary form (TC ac. 874/2013). Law 1/2016 implemented this declaration of unconstitutionality. In other words, crimes with a prison sentence of more than 5 years cannot be judged in summary form, without having activated the mechanism of art. 16th/3.

But not all crimes judged in summary form will fall under the jurisdiction of the single court, because there are crimes with a sentence of less than 5 years that, nevertheless, fall under the jurisdiction of the collective court by virtue of the qualitative criterion. Therefore, 16.º/2 c) was judged unconstitutional because if one of these crimes (cf. 14.º/1 and 14.º/2 c)) is judged in a summary process, it is still the jurisdiction of the collective courts.

B. Abbreviated Process (arts. 391.º-A and ss.)

Regarding the assumptions:

Crime punishable by a fine or abstractly applicable prison sentence not exceeding 5 years. The crime may have a maximum prison sentence of more than 5 years, if the MP considers that a specific sentence of more than 5 years should not be applied (16/3).

Existence of simple and obvious evidence, which results in sufficient evidence.

Charge filed within 90 days (391.º-B).

C. Summary Process (articles 392 and ss.)

Regarding the assumptions:

Crime punishable by a fine or abstractly applicable prison sentence not exceeding 5 years.

MP considers that a non-deprivation of liberty penalty or security measure should be specifically applied.

If it is a procedural crime, it depends on a private accusation and also on the assistant's agreement.

Non-opposition by the defendant.

If it does not fit into any of these forms, then the special process forms are excluded, continuing with the common form.

In case of competition:

Although each crime (art. 373.º/2) is individually considered to have a legal period of no more than 5 years, as there is a competition and the sum of the maximum limits is higher than 5 years - jurisdiction of the collective court (art. 14.º/ 2/b). However, the MP could make use of the power referred to in 16.º/3 (with the effect: nº4), that is, the MP could understand that in the specific case a superstitious penalty will not be applied.greater than 5 years requesting trial in a single court (art.16.º/3 and 4). The jury would never have jurisdiction because one of the crimes must have a sentence of more than 8 years.

2nd instance - Court of Appeal: follows the general rule of art. 427th CPP; there is no circumstance that would allow direct appeal to the STJ;

Specifically, art. 342.º/1/c CPP OR art. 432.º/1/c CPP for crime is punishable by a maximum of 3 years in prison.

In abstract, the relationship knows of law and fact (art. 428); if in this case the motivation is only a matter of law (art. 412.º) the relationship only considers the appeal filed regarding a matter of law (art. 410.º/2).

3rd instance: none (case becomes final in the Court of Appeal, never going up to the STJ): art. 432.º/b CPP which could allow a 2nd degree of appeal because, by reference to art. 400th, and taking into account the legal framework of the crime (5 years) it would never leave the sphere of non-appealability presupposed in art. 400th CPP (say which of the paragraphs would be the relevant hypotheses here, normally they are d) and e) CPP).

PROCEDURE PHASES

Inquiry

A is accused. Which entity accused and what criteria did it meet?

It would have been the MP under the principle of legality as a principle.

The (person who was accused of committing the crime) must assume the status of defendant (arts. 57 and ss. CPP), that is, the person against whom criminal proceedings are underway. The constitution as a defendant is made in accordance with the provisions of arts.

272.º/1 and 58.º/1/a) of the CPP.
The act of constituting an accused is a material, unilateral act, but mandatory for the entities holding the criminal proceedings in certain circumstances (indicate which of them is present), under penalty of nullity (art. 120.º/2/d) CPP) :
272.º/1: an investigation is carried out against a certain person in relation to whom there is a well-founded suspicion of committing a crime, and he or she is interrogated.
58.º/1 a): if an investigation is carried out against a certain person in relation to whom there is a well-founded suspicion of committing a crime, and he or she makes a statement before any judicial authority (AJ) or criminal police body (OPC).
58.º/1 b) and 192.º/1 and 2: to apply a measure of coercion or property guarantee.
58.º/1 c) and 254.º and ss.: if the suspect is detained.
58.º/1 d): if a report is issued that identifies a person as an agent of a crime and it has been communicated to them, unless the news is manifestly unfounded.
59.º/1: if during an interview a well-founded suspicion of a crime committed by the respondent arises.
59.º/2: if the person suspected of having committed the crime requests to be accused, as long as steps are being taken that personally affect him or her.
The constitution of the accused must be duly formalized, otherwise the statements made by the person concerned cannot be used as evidence. Compliance with the requirements of art. 58.º/2, 3 and 4 CPP:
Oral or written communication of the constitution indicating the inherent rights and duties;
Delivery of a document identifying the case, the rights and duties of the accused and the defender, if this has been appointed;
As the constitution of the defendant was made by the OPC, it would have to be communicated to the AJ within 10 days, and assessed by the AJ, in order to validate the constitution (art. 1.º/1/b and c CPP);
Subject to identity and residence term (TIR)

(art. 196.º CPP).
The assumption of the status of defendant implies the assumption by him of the status of procedural subject throughout the course of the criminal process, marked by rights and duties (arts. 57.º/2 and 61.º CPP).
For the survey to be underway, conditions had to be met:
If the crime is semi-public, it is necessary to file a complaint (article 113 and ss. CP, articles 48 and 49 CPP), which constitutes a limitation of the principle of officiality.
Mention of the principle of officiality (and its limit) and the principle of legality (art. 219.º/1 CRP, arts. 244.º, 246.ºand 262nd CPP).
A criminal investigation is being carried out against A on suspicion of having committed a crime. If you are called to appear, the competent criminal police body wants to question you about the facts alleged against you. For this procedural act to be considered valid, how should the criminal police body have proceeded and on what legal basis did it act? A must be constituted as a defendant (art. 58.º/1/a and 272.º/1 CPP). Formalities: art. 58.º/2 and 4. Need for validation by the MP (investigation phase) art.58.º/3 (to guarantee direction by "delegated" investigation).
If the competent entity understands that there is sufficient evidence of crimes, what should it proceed at the end of the respective procedural phase and what decision-making options will legally be available to it?
The MP (art. 263.º/1) must accuse (283.º/1 and 2 CPP) under the principle of legality - closure of the investigation (art. 53.º/1/b, 262.º CPP).
Eventually, it could resort to the institution of provisional suspension of the process (mention the principle of legality and the principle/sphere of opportunity; prerequisites for provisional suspension: art. 281.º CPP; effects and duration: art. 282.º).
Archiving (277th CPP) or archiving in case of sentence exemption (art. 280. CPP, art. 74. and 192. CP) was not permissible.
If the defendant wants to resolve the case at the current procedural stage (without the need to open another procedural stage) he or she may request the provisional suspension of the case (art. 281 CPP):
At the defendant's request to the MP.
Check whether the underlying penal framework allows it or not.
Check the remaining criteria and formalities.
Sphere of opportunity in light of the principle of legality.
But if this does not happen and, having gathered sufficient evidence for the MP to prosecute (art. 283.º/1 and 2 CPP) - strict principle of legality at the end of the investigation, the accused may request the opening of an investigation1 (287.º/ 1/a and 2 CPP), with the aim of wanting the instruction to end with an order of non-pronouncement (308.º/1/final part CPP). Hierarchical intervention is not applicable to this type of situation.
If the person who suffered the crime wants to intervene in the process, they will have to act as an assistant (arts. 68 and ss.) and

request the opening of the investigation (arts. 287 and 286).
If, in turn, the competent entity understands that the evidence was clear and clear regarding the sufficiency of evidence, then it will have the following forms of process at its disposal:
Common process.
Summary process (there must be a flagrant crime - art. 381.º/1).
Abbreviated process (art. 391-A):
The crime must be punishable by a fine or imprisonment for up to 5 years (391.º-A/1 CPP).
prosecution must occur within 90 days of the filing of the complaint - 391.º-B/2/b CPP or after news of the crime. Depending on the date of the complaint, the accusation may or may not be brought to trial in an abbreviated process.
Summary process (art. 392).
crime punishable with a prison sentence of up to 5 years (392.º/1 CPP).
it is necessary for the MP to request the imposition of a penalty (and not merely a trial) in a very summary process.
What if the people who suffered the crime want to be compensated for the damages they suffered? Principle of adhesion (art.71.º CPP). As a rule, they must file a claim for civil compensation before the criminal court, as they have legitimacy (art.74 CPP). They assume the procedural position of civil party (injured party).
Since the criminal procedure depends on a complaint, there was, as an alternative, the possibility of filing a civil compensation claim before the civil court (art.72.º/1/c and 2 CPP).
X is an injured party, that is, the person who suffered damage caused by the crime (74.º/1). It assumes the status of a civil party, not strictly speaking a true subject of criminal proceedings, being in the process only to clarify civil matters. Thus, civil and criminal liability emerging from the same fact, the criminal process is the appropriate place to deduce the respective claim for compensation.civil. A principle of mandatory adherence is in force, with the criminal court having jurisdiction to judge both issues (art. 71).
X may only file his claim separately, before the civil court, in the cases referred to in art. 72nd.
The injured party's procedural intervention is restricted to supporting and proving the claim for civil compensation. To do this, you are entitled to the rights that the law confers on assistants (arts. 74.º/2 and 69.º).
For these purposes, we have to distinguish the injured party from the offended party:
Injured party - is the person who suffered damage caused by the crime (art. 74/1 CPP). He is a civil subject, who intends to receive compensation for the damages suffered, and not exactly criminal proceedings, as can be seen from the fact that his intervention is restricted to supporting and proving the civil compensation claim (art. 74.º /two). Its connection to criminal proceedings is related to the principle of adhesion (art. 71), according to which the injured party must file a claim for civil compensation before the criminal court.
Offended party - is the holder of interests that the law specifically wanted to protect by incriminating the fact that occurred (art.68.º/1 a) CPP, art. 113.º/1 CP). The offended party can become an assistant and assume the position of procedural subject, which allows him or her to participate constitutively in the declaration of the law of the specific case (art. 32/7 CRP).
Competent Investigating Judge - judge of liberalities/guarantees
The JIC has a dual function: on the one hand, it is the competent judicial authority to direct the procedural phase of the investigation (art. 288); on the other hand, he is the judge who guarantees the fundamental rights, not only of the accused, but of other procedural participants.
In fact, it follows from the CRP itself that issues relating to fundamental rights must be in the hands of a judge (art. 32/4 CRP), establishing the CPP that it is the JIC that deals with fundamental rights up to the trial stage (art. 17th CPP). Therefore, it is up to this judge, in particular, to apply coercive measures, proceed or authorize means of obtaining evidence, authorize the carrying out of expert examinations and carry out the first judicial interrogation of the detained defendant (arts. 268 and 269).
The direction of the investigation is the responsibility of the investigating judge, who performs all the necessary acts to achieve the purpose of proving the MP's decision (art. 288.º/1 and 290.º/1).
Instruction
Faced with a decision from the Public Prosecutor's Office that the defendant/assistant does not agree with, he or she may request the opening of the investigation (articles 286 and ss. CPP).
As for the offended party, to request the opening of the instruction, he must, previously or simultaneously, request the constitution as an assistant - arts. 287.º/1/b) and 68.º/3/b) CPP.
The purpose of the instruction is to provide judicial confirmation of the decision to bring charges or close the investigation, in order to submit or not the case to trial (art. 286/1). It is, therefore, an optional phase (art. 286.º/2), which will only take place if requested by the accused or the assistant, i.e., by the procedural subjects who will be interested in contradicting the decision taken by the MP at the end of the investigation. .
If there is no request to open the investigation, the case follows its normal procedures - either it is archived, or it goes to trial.
The direction of the investigation is the responsibility of the investigating judge, who performs all the necessary acts to achieve the

purpose of proving the MP's decision (art. 288.º/1 and 290.º/1).
Defendant asking:
The accused requests, within a period of 20 days, the opening of the investigation regarding the facts for which the MP (or the assistant in the case of a procedure dependent on private accusation - art. 285) has brought charges (art. 287.º /1 a)). Its objective is to counter that accusation, therefore for the JIC to issue an order of non-indictment.
Assistant to order:
The assistant requests, within 20 days, the opening of the investigation regarding the facts for which the MP has not brought charges, in cases where the procedure does not depend on a particular accusation (art. 287.º/1 b)).
In cases where the procedure depends on a private accusation, the assistant may also request the opening of the investigation, if the MP has closed the investigation incorrectly or without notifying the assistant. Here, the presentation of a request is equivalent to the deduction of a private accusation.
Alternatively, the assistant may request hierarchical intervention (art. 278).
Coercive Measures
To know the entity that should promote the application of the measure, we must first define the phase in which the process is.
If the process is in the investigation phase:
It must be requested by the MP (art. 267.º and 194.º/1 CPP) and is applied/decided by the investigating judge (art. 194.º/1, 268.º/1/b CPP).
Check the general requirements for the application of coercive measures (art. 204 CPP).
The investigating judge can only apply a more serious measure of coercion than that requested by the MP in cases of escape or danger of escape and danger, depending on the circumstances of the crime or the personality of the defendant, which he continues to .194.º/2 and 204.º/a) and c) CPP.
The application of the coercive measure will have taken place:
Or during the 1st judicial interrogation of a detained defendant (arts. 194.º/4, 141.º/1, 255.º, 254.º/1/a) CPP).
Or later, through a hearing by the investigating judge (art. 194.º/4 CPP).
In both cases, the defender will attend the act (art. 141.º/2, 64.º/1/a) and b) CPP). We will always have to apply the provisions of arts. 141.º/1 and 194.º/4 CPP. Therefore, the statements thus made can be read at a trial hearing, always being subject to the free assessment of the evidence (art. 357.º/1/b), 141.º/4/b), final part and 357.º/ 2 CPP).
Coercive measure prohibiting contact with other people and the offended party (art. 200 CPP) as there is a risk of concealment and destruction of evidence.
Regarding the procedure:
Request by the MP (when the case is in the investigation phase): decision by the judge with prior hearing of the defendant on evidence and precautionary grounds (art.194.º/2 and 4). Duly reasoned application decision.
Conditions:
Precautionary grounds (art. 204/b): judge cannot, in this case, apply a more serious measure than that required by the MP: current application and general principles of application (legality, proportionality in the broad and strict sense);
Art. 200/d): strong evidence of an intentional crime punishable by a sentence of more than 3 years (there is an abuse of trust); application justified by necessity, adequacy and proportionality.
Preventive Prison Coercion Measure
Purposes (art. 191 and ss. CPP).
Entity competent to propose and entity competent to apply coercive measures (art. 194 CPP).
Assumption:
prior constitution as a defendant - art. 192.º/1 CPP; in this case, art. would already have been verified. 58.º/1/c CPP.
verification, at the time of application, of one of the general requirements that legitimize the application of a MC: art.204.º CPP and also arts. 191st, 192nd, 193rd CPP.
verification of the principle of necessity, adequacy and proportionality (art. 193.º/1 CPP).
verification of 1 of the specific requirements that legitimize the application of preventive detention (art. 202.º CPP): strong evidence of the commission of an intentional crime, a requirement of the applicable criminal frameworks.
verification of the principle of subsidiarity (the remaining measures are insufficient, namely the obligation to remain in housing, which is also a preventive measure of freedom).
prior hearing of the defendant (art. 194/4).
issuance of a duly substantiated preventive detention order (art. 194/6 CPP).
What can a person who has been subject to a coercive measure do if they consider that a long time has passed since the beginning of the application of the measure, and that it is currently no longer justified: principle of precariousness (art. 212.º/1/b CPP). Justification

of the principle: timeliness and proportionality in the implementation or maintenance of the measure. A must request the judge to revoke or replace the measure (art. 212/4).

Detention

1st interrogationJudgment of detained defendant - means of evidence (art. 141 CPP):

detention situation.

constitution as a defendant.

caution from A's DF's because he was detained (art. 58.º/1/c) CPP).

interrogation carried out by an investigating judge (art. 17.º CPP, art. 268.º/1/a), 32.º/4 CRP), despite taking place during the investigation - as he is the judge of guarantees, as we have already seen .

Arrest in flagrante delicto (255th CPP)

Purposes: trial within a maximum period of 48 hours or presentation to the judge, for validation and application of a coercive measure.

When it is a situation of arrest in flagrante delicto, the first judicial interrogation of the detained defendant must be carried out by the criminal investigation judge (141st CPP, 268th/1/a CPP). A defendant was constituted as a result of the arrest - 58.º/1/c) CPP.

What procedural steps followed the arrest?

The purpose of detention is to present the detainee to the judge within a maximum period of 48 hours, for the application of a coercive measure or to submit the trial in summary proceedings. In this case, if the trial is not likely within a maximum period of 48 hours (due to impossibility, due to penalty or respect for 48 hours), it is necessary to present it to the judge and possible application of a coercive measure.

Means of Evidence

Telephone tapping (art. 187)

Who orders the wiretaps and at whose request (187.º/1)? They are authorized by the investigating judge, during the investigation, upon request from the Public Prosecutor's Office, in crimes for which the law provides for the admissibility of using this means of obtaining evidence.

Assumption:

if there is reason to believe that diligence is indispensable to the discovery of the truth or that proof would otherwise be impossible or very difficult to obtain,

Against whom can wiretapping be authorized? Against suspects (187.º/4).

art.187.º/1/a and nº4 paragraph a and 269.º/1/e CPP.

Searches (art. 174.º)

If it is a home search (art. 177).

Articles 32 and 34 CRP.

General rule of competence of the CPP in matters of home searches (art. 177).

Competence of the investigating judge (art. 269.º/1/c) CPP).

If there is an arrest in flagrante delicto (art. 177.º/3/a) CPP).

Judgment Hearing

What if the defendant does not appear?

Assumption:

A was made an Accused when interrogated (articles 55, 56, 272 and 58/1/a CPP).

upon being constituted as an accused, he pays TIR - art. 196.º/1 CPP- and was warned (art. 196.º/3/a) and c) CPP).

therefore, you will have been notified of the date of the trial hearing (arts. 58, 113/1/c) and therefore, if you do not appear, the prerequisites for the absentee trial regime to be applied (art. 333) .º/1 CPP): A would be judged in absence (exceptionally the trial would be postponed).

exception to the rule of mandatory presence of the defendant at a trial hearing (art. 332.º CPP, art. 32.º/6 CRP).

Can the defendant be declared contumacious within the scope of this case?

If the requirements for the application of the absentee trial regime are met, the defendant should not be declared contumacious, but should be tried in absentia.

Change of legal qualification (during the trial hearing the court understands that the facts described in the indictment relating to one of the crimes must be subsumed into another crime)

The principle of accusation and the need to guarantee the thematic connection of the court and the adversary/defense of the accused are at stake. In this case, a change in legal qualification is at stake (art. 358/3 CPP).

There is no change in facts. The object of the case (court's binding) is not called into question, but the defendant's contradiction must be guaranteed, that is, be warned and have the possibility of presenting evidence (art. 379.º/1/b). Need to ensure that the sentence corresponds to the accusation or the modifications introduced as long as it prevents the defendant from being contradicted.

Substantial change in facts: new facts emerge that increase the criminal framework

For example: what if, at trial, not only the facts contained in the accusation are determined, but also other facts that demonstrate that the crime committedbecause A falls under the crime of qualified breach of trust rather than simple breach of trust; thus, new facts emerge that increase the penal framework.

Art. 1/1/f) CPP.

new facts: they violate the object of the process, they are not autonomous from it.

the court must continue the trial based on the facts contained in the accusation and disregard those established in the meantime.

Art. 359.º/1 CPP.

At the trial hearing, A claims that he did not commit any crime of abuse of trust because this crime presupposes that the agent acts with an illegitimate intention of appropriation. A alleges that he has a right to credit over B because he acted legitimately according to the rules of civil law and, if necessary, he will bring the respective action in the competent jurisdiction to demonstrate his right. How should the criminal court proceed and what principle of criminal proceedings could be at stake?

Principle of sufficiency: (art.7/1 and 2 CPP). It is up to the criminal court to assess the preliminary issue integrated in the respective criminal proceedings. The court may of its own motion order the suspension of proceedings for consideration of the disputed non-criminal matter only if it cannot conveniently resolve the issue in the criminal court, and always by setting a maximum period after which the issue is resolved by the criminal court (nº 3 and 4).

Confession

At the trial hearing, the possibility of hearing A's statements during interrogation is raised, in which A will have acknowledged some responsibility. If this hearing is viable, what is the principle to which the assessment of the statements by the competent entity will be subject?

The interrogation was carried out by a judge (investigating) with the presence of the defender. It is expected that the requirements of art.141.º/4/b have been observed (the general principle is that statements cannot be read; unless they have been made within the circumstances of 141.º/4/b CPP) . By virtue of 357th CPP, statements made can be reproduced at the hearing, at the request of the accused but above all in light of 357th/1/b.

The assumption of responsibility is not valid as a confession (art. 344), that is, it will never imply the renunciation of the production of evidence (even partially); the statements will be valued, in conjunction with all other evidence according to the principle of free assessment: art.127.º CPP.

content of this principle (distinction before the principle-system of legal proof).

positive function and negative function, need for objectification/substantiation and controllability (exceptions). Therefore, even despite those statements made, A could be acquitted at the end of the trial hearing.

At the trial hearing, A remained silent/chose not to make a statement. Can the court take advantage of a previous confession (full of the facts contained in the indictment before the accusing entity) of the accused?

If it was a confession heard by criminal police bodies, it cannot (art.1.º/1/c CPP). If the statements were made before the OPC (instead of the AJ), they cannot be read unless requested by the accused (357.º/1/a CPP). Exception to the general rule of production and evaluation of evidence at trial - 355th CPP.

It could be if they were statements that had been made before the judicial authority: MP (art.1.º/b CPP) during the investigation, with mandatory assistance from the defender (art.64.º/1/b CPP). The regime of article 357.º/1/b applies (permitted reproduction or reading of the defendant's statements), fulfilling the duty of information provided for in article 141.º/4/b, the statements can be read in judgment, subject to the rule of free assessment of evidence (art.357.º/2 and 127.º CPP).

this confession (made during interrogation to apply a coercive measure) can be read during the trial and be subject to the principle of free assessment of the evidence, as it was provided before the judicial authority, with the assistance of the defense attorney, and the defendant was informed of that the statements made by you may later be usedincluded in the process (194.º/1 and 4, 64.º/1/b, 141.º/4 and 268.º/1/b CPP). Art.355 CPP, art. 357.º/1/b and 2 CPP, 127.º CPP.

In other words, statements made before the trial phase can only be used in the trial if they were collected based on the assumptions of art. 141: as long as the accused had been duly informed, by judicial authority (if he was detained, it would be possible before the judge), with the presence of the defender. These statements are subject to free assessment of the evidence and are not valid as a confession (there must be other means of proof). Another hypothesis would be for the defendant to request its reading (the defendant's statement can be reproduced/read at the trial hearing at his own request (art.357.º/1/a CPP).

Interruption of the hearing

principle of concentration on the temporal aspect of continuity of the hearing (328th CP).

content: need to concentrate procedural acts.

basis: connection with the principle of publicity of the hearing and guarantee of better appreciation and valuation of the evidence produced at the hearing; prevent loss of value of the evidence.

justification of the principle: memory of the procedural subjects and the court, guaranteeing contradictory and good decision.
conflicting interests: continuity and documentation of statements made (363rd).
solution before the legislative change: 30 days and loss of effectiveness of the test (establishment of jurisprudence). Passing 30 days: loss of effectiveness of the evidence produced (legal solution confirmed by Jurisprudence Fixation Act 11/20082.
current solution: there is no provision for evidentiary sanctions, but there is a duty to provide reasons.
Ex.1:
During the trial, it was necessary to interrupt the hearing, which was resumed 40 days later--> in this case there was no basis for postponing the hearing.
Ex.2:
The hearing began on 03/27 and after the witnesses offered by the prosecution were heard, it was postponed until 04/24/2014. Due to an accident, it was not possible to resume the hearing on that date, only being able to do so in May of this year.
Expert evidence at the trial hearing (art. 151) resulting in a report proving that the defendant is guilty of falsifying documents.
principle of free assessment of evidence (art.127). Limit to this principle enshrined in art.163. The court must accept as proven the fact resulting from the expert report (authorship of the signature), although it may rule out such a result if the court fundamentally diverges from the expert's judgment (art. 157.º/1, 163.º/1, final part, 163 .º/2, 97.º/5).
At trial, can a witness refuse to give a statement?
Yes, see. art.134 CPP.
1 What can the accused do, if the MP understands that there is sufficient evidence of the crimes, that is, if he wants to contest because:
thinks that crime didn't happen.
or because he claims that the person who claims to have suffered the crime had given him consent to do so,
or simply if the defendant has been accused and does not intend to go to trial--> what can the defendant do to avoid being put on trial--> OPENING OF INSTRUCTION.
2 Pursuant to article 328, no. 6, of the Code of Criminal Procedure, postponing the trial hearing for a period longer than 30 days implies the loss of effectiveness of the evidence produced subject to the principle of immediacy. Such loss of effectiveness occurs regardless of the existence of documentation referred to in article 363 of the same diploma.