

This section of the file corresponds to book 3 (On evidence), title 3 (On means of obtaining evidence) of the Portuguese criminal procedure code.

Chapter I - Exams

Article 171 - Assumptions

1 - By means of examinations of people, places, animals and things, the traces that the crime may have left and all evidence relating to the way in which and the place where it was committed, the people who committed it or upon which it was committed.

2 - As soon as there is news of the commission of a crime, measures are taken to prevent, where possible, traces from being erased or altered before they are examined, prohibiting, if necessary, the entry or transit of strangers into the location of the crime or any other acts that could harm the discovery of the truth.

3 - If the traces left by the crime are altered or have disappeared, the state of the people, places, animals and things in which they may have existed is described, trying, as far as possible, to reconstruct them. them and describing the manner, time and causes of the change or disappearance.

4 - As long as the competent judicial authority or criminal police body is not present at the scene, it is up to any agent of the authority to provisionally take the measures referred to in paragraph 2, if otherwise there is imminent danger in obtaining the evidence.

Article 172 - Subject to examination

1 - If anyone intends to exempt themselves from or obstruct any due examination or to provide an animal or thing that should be the subject of examination, they may be compelled by decision of the competent judicial authority.

2 - The provisions of paragraphs 3 of article 154 and 6 and 7 of article 156 are correspondingly applicable

3 - Exams that may offend people's modesty must respect the dignity and, as far as possible, the modesty of those who undergo them. Only those taking part in the examination and the competent judicial authority are present at the examination, and the examinee may be accompanied by a person he trusts, if there is no danger of delay, and must be informed that he has this option.

Article 173.^o - People at the exam site

1 - The competent judicial authority or criminal police body may determine that any person or persons do not leave the examination site and, with the assistance of public force, if necessary, force those who wish to leave to remain there. until the exam is over and your presence is essential.

2 - The provisions of article 171, paragraph 4, are correspondingly applicable.

Chapter II - Magazines and searches

Article 174.^o - Assumptions

1 - When there is evidence that someone is hiding any animals, things or objects related to a crime or that could serve as evidence on their person, a search is ordered.

2 - When there is evidence that the animals, things or objects referred to in the previous paragraph, or the defendant or another person who must be detained, are in a reserved place or not freely accessible to the public, a search is ordered.

3 - Searches and searches are authorized or ordered by order by the competent judicial authority, which must, whenever possible, preside over the investigation.

4 - The order provided for in the previous paragraph has a maximum validity period of 30 days, under penalty of nullity.

5 - The requirements contained in paragraph 3 exclude searches and searches carried out by a criminal police body in the following cases:

a) terrorism, violent or highly organized crime, when there is solid evidence of the imminent commission of a crime that puts the life or integrity of any person at serious risk;

b) to which those concerned consent, as long as the consent given is, in any way, documented; or c) upon arrest in the act for a crime that carries a prison sentence.

6 - As the legal person or similar entity is the target of the investigation, consent for this purpose can only be obtained from the representative.

7 - In the cases referred to in paragraph a) of paragraph 5, the completion of the investigation is, under penalty of nullity, immediately communicated to the investigating judge and assessed by him in order to validate it.

Article 175 - Magazine formalities

1 - Before carrying out the search, the person concerned is given, except in the cases referred to in no. 5 of the previous article, a copy of the order that determined it, in which it is mentioned that the person may indicate, to witness the investigation, a person from the your confidence and present yourself without delay.

2 - The search must respect the personal dignity and, as far as possible, the modesty of the subject.

Article 176 - Search formalities

1 - Before carrying out the search, except in the cases of paragraph 5 of article 174, whoever has the location where the investigation is carried out is available, a copy of the order that determined it, in which the mentions that you can attend the

investigation and be accompanied or replaced by a person you trust who can present themselves without delay.

2 - If the people referred to in the previous number are missing, the copy is, whenever possible, given to a relative, a neighbor, the doorman or someone who replaces him.

3 - Along with the search or during it, a search of people who are in the place may be carried out, if whoever orders or carries out the search has reasons to assume that the assumptions of article 174, paragraph 1, are met. You can also proceed as provided in article 173.

Article 177.^o - Home search

1 - The search of an inhabited house or a closed premises may only be ordered or authorized by the judge and carried out between 7am and 9pm, under penalty of nullity.

2 - Between 9 pm and 7 am, a home search can only be carried out in cases of:

- a) terrorism or especially violent or highly organized crime;
- b) consent of the target, documented in any form;
- c) flagrant crime for committing a crime punishable by a maximum prison sentence of 3 years.

3 - Home searches may also be ordered by the public prosecutor or carried out by a criminal police body:

- a) In the cases referred to in paragraph 5 of article 174, between 7 am and 9 pm;
- b) In the cases referred to in paragraphs b) and c) of the previous paragraph, between 9 pm and 7 am.

4 - The provisions of paragraph 6 of article 174 are correspondingly applicable in cases where the home search is carried out by a criminal police body without the consent of the target and outside the act of committing a crime.

5 - In the case of a search in a lawyer's office or in a doctor's office, it is, under penalty of nullity, personally presided over by the judge, who previously notifies the president of the local council of the bar or medical association, so that the same person, or one of his delegates, may be present.

6 - In the case of a search at an official health establishment, the notice referred to in the previous paragraph is made to the president of the establishment's board of directors or management or to whoever legally replaces him.

Chapter III - Seizures

Article 178 - Object and prerequisites for seizure

1 - Instruments, products or advantages related to the commission of a typical illicit act are seized, as well as all animals, things and objects that were left by the agent at the scene of the crime or any others capable of serving as evidence .

2 - The instruments, products or advantages and other objects seizedAnimals seized under the terms of the previous number are attached to the proceedings, when possible, and, when not, entrusted to the custody of the court official assigned to the proceedings or of a depositary, with everything being mentioned in the record, and the seized animals must be entrusted to the custody of depositaries suitable for the role, with the possibility of ordering the care measures, such as feeding and other duties provided for in the civil code.

3 - Seizures are authorized, ordered or validated by order of the judicial authority.

4 - Criminal police bodies may carry out seizures during searches or searches or when there is urgency or danger in delay, under the terms provided for in article 249, paragraph 2, paragraph c). 5 - Criminal police bodies may also carry out seizures when there is a well-founded fear of disappearance, destruction, damage, uselessness, concealment or transfer of animals, instruments, products or advantages or other objects or things resulting from the practice of a typical unlawful act that may be declared lost in favor of the state.

6 - Seizures carried out by criminal police bodies are subject to validation by the judicial authority, within a maximum period of seventy-two hours.

7 - Holders of instruments, products or advantages or other objects or things or animals seized may request the judge to modify or revoke the measure.

8 - The request referred to in the previous paragraph is recorded as an appendix, with the public prosecutor being notified to file an objection within 10 days. 9 - If the instruments, products or advantages or other objects or things or animals seized are likely to be declared lost in favour of the state and do not belong to the defendant, the judicial authority shall order the presence of the interested party and shall hear him/her.

10 - The judicial authority shall waive the presence of the interested party when this is not possible.

11 - Once the seizure has been carried out, the respective registration shall be promoted in the cases and under the terms provided for in the applicable registration legislation.

12 - In the cases referred to in the previous paragraph, if there is a record of acquisition or recognition of the right of ownership or mere possession in favour of a person other than the person considered to be the owner of the same in the proceedings, before promoting the registration of the seizure, the judicial authority shall notify the registered owner so that, if he/she so wishes, he/she may express his/her opinion within a period of 10 days.

Article 179 - Seizure of correspondence

1 - Under penalty of nullity, the judge may authorise or order, by order, the seizure, even in post and telecommunications stations, of letters, parcels, valuables, telegrams or any other correspondence, when he has reasonable grounds to believe that:

- a) the correspondence was sent by the suspect or is addressed to him, even if under a different name or through a different person;
- b) the crime is at stake, punishable by a maximum prison sentence of three years; and
- c) the proceeding will prove to be of great interest to the discovery of the truth or to the collection of evidence.

2 - The seizure and any other form of control of correspondence between the accused and his defence counsel is prohibited, under penalty of nullity, unless the judge has reasonable grounds to believe that it constitutes the object or element of a crime.

3 - The judge who has authorised or ordered the proceeding is the first person to be made aware of the content of the correspondence seized. If he considers it relevant for the evidence, he must attach it to the proceedings; otherwise, he must return it to the person entitled to it, and it cannot be used as evidence, and he is bound by a duty of secrecy regarding anything he has become aware of and that is not relevant for the evidence.

Article 180.^o - Seizure in a lawyer's office or in a doctor's surgery

1 - The provisions of paragraphs 5 and 6 of article 177 shall apply correspondingly to seizures carried out in a lawyer's office or in a doctor's surgery.

2 - In the cases referred to in the previous paragraph, the seizure of documents covered by professional secrecy, or covered by medical professional secrecy, shall not be permitted, under penalty of nullity, unless they themselves constitute the object or element of a crime.

3 - The provisions of paragraph 3 of the previous article shall apply correspondingly.

Article 181 - Seizure in a bank

1 - The judge shall seize documents, securities, valuables, sums and any other objects, even if in individual safes, in banks or other credit institutions when he has reasonable grounds to believe that they are related to a crime and will be of great interest for the discovery of the truth or for evidence, even if they do not belong to the defendant or are not deposited in his name.

2 - The judge may examine correspondence and any bank documentation to discover the objects to be seized under the terms of the previous paragraph. The examination shall be carried out personally by the judge, assisted, when necessary, by criminal police bodies and qualified technicians, and shall be bound by a duty of secrecy with regard to anything of which they have become aware and which is not relevant for evidence.

Article 182 - Professional or official secrecy and state secret

1 - The persons referred to in articles 135 to 137 shall present to the judicial authority, when so ordered, the documents or any objects in their possession that must be seized, unless they invoke, in writing, professional or official secrecy or state secrets.

2 - If the refusal is based on professional or official secrecy, the provisions of articles 135, paragraphs 2 and 3, and 136, paragraph 2 shall apply accordingly.

3 - If the refusal is based on state secrets, the provisions of article 137, paragraph 3 shall apply accordingly.

Article 183 - Copies and certificates

1 - A copy of the seized documents may be attached to the case file, in which case the original shall be returned. If it becomes necessary to keep the original, a copy or certificate may be made of it and delivered to the person who legitimately held it. The copy and certificate shall expressly mention the seizure.

2 - A copy of the seizure report shall be delivered, whenever requested, to the person who legitimately held the document or object seized.

Article 184 - Affixing and lifting of seals

Whenever possible, seized objects shall be sealed. When the seals are lifted, if possible, the same persons who were present when they were affixed shall be present, and they shall check that the seals have not been broken or that no alteration has been made to the seized objects.

Article 185 - Seizure of worthless, perishable, dangerous or perishable items

1 - If the seizure concerns worthless, perishable, dangerous or perishable items or items whose use implies loss of value or qualities, the judicial authority may order, as the case may be, their sale or allocation for a public or socially useful purpose, the necessary conservation or maintenance measures or their immediate destruction, except as provided for in paragraphs 4 and 5.

2 - Unless otherwise provided by law, the judicial authority shall determine the form in which the sale must be made, from among those provided for in the civil procedural law.

3 - The proceeds determined under the terms of the previous paragraph shall revert to the state after deduction of the expenses resulting from custody, conservation and sale.

4 - When the item referred to in paragraph 1 is a motor vehicle, a vessel or an aircraft, within a maximum period of 30 days after the seizure, the judicial authority issues an order ordering its shipment to the assets administration office for administration purposes in accordance with the provisions of law no. 45/2011, of 24 June, namely its articles 14. ^o and 20.^o-a, communicating to that office

information about the evidentiary value of the vehicle and the probability of its loss in favor of the state.

5 - If, pursuant to the provisions of the previous paragraph, it has been communicated to the property administration office that the motor vehicle, vessel or aircraft constitutes relevant evidence, as soon as this no longer occurs, the judicial authority shall notify the fact immediately.

Article 186 - Return of seized animals, things and objects

1 - As soon as it becomes unnecessary to maintain the seizure for the purpose of evidence, the animals, things or objects seized are returned to the person entitled to them or, in the case of animals, to the person who has been appointed as their faithful custodian.

2 - As soon as the sentence becomes final, the animals, things or objects are returned to the rightful party, unless they have been declared lost in favor of the state.

3 - The people to whom the animals, things or objects must be returned are notified to collect them within a maximum period of 60 days, after which, if they do not do so, they are considered lost to the state.

4 - If it proves to be impossible to determine the identity or whereabouts of the people referred to in the previous paragraph, the judge shall issue a reasoned order by issuing notice, in which case, in this case, the maximum period for collecting the animals will be 90 days, of things or objects.

5 - The provisions of the previous paragraphs are subject to the exception of the case in which the seizure of animals, things or objects belonging to the defendant, the person responsible or a third party must be maintained as preventive seizure, in accordance with article 228.

6 - When the restitution or seizure referred to in the previous paragraphs concerns property whose seizure has been previously registered, the cancellation of such registration is promoted and, in the second case, the simultaneous registration of the seizure.

7 - With regard to the restitution of animals, it must always be ensured that the animal welfare conditions provided for by law are met.

Chapter IV - Telephone tapping

Article 187 - Admissibility

1 - The interception and recording of conversations or telephone communications may only be authorized during the investigation if there is reason to believe that diligence is indispensable for the discovery of the truth or that proof would otherwise be impossible or very difficult to obtain. obtain, by reasoned order from the investigating judge and upon request from the public prosecutor, regarding crimes:

- a) punishable by a maximum prison sentence of 3 years;
- b) relating to drug trafficking;
- c) possession of a prohibited weapon and arms trafficking;
- d) smuggling;
- e) insult, threat, coercion, breach of private life and disturbance of peace and quiet, when committed over the telephone;
- f) threat of crime or abuse and simulation of signs of danger; or
- g) evasion, when the defendant has been convicted of any of the crimes set out in the previous paragraphs.

2 - The authorization referred to in the previous paragraph may be requested from the judge in the places where the telephone conversation or communication may take place or from the headquarters of the entity responsible for criminal investigation, in the case of the following crimes:

- a) terrorism, violent or highly organized crime;
- b) kidnapping, kidnapping and hostage taking;
- c) against cultural identity and personal integrity, provided for in title iii of book ii of the penal code and provided for in the criminal law relating to violations of international humanitarian law;
- d) against the security of the state provided for in chapter i of title v of book ii of the penal code;
- e) counterfeiting of currency or securities equivalent to currency provided for in articles 262, 264, in the part that refers to article 262, and 267, in the part that refers to articles 262 and 264 of the criminal code, as well as counterfeiting of cards or other payment devices and use of counterfeit cards or other payment devices, provided for in article 3.^o-a and paragraph 3 of article 3.^o-b of the law No. 109/2009, of September 15;
- f) covered by a convention on the safety of air or maritime navigation.

3 - In the cases provided for in the previous paragraph, the authorization is brought, within a maximum period of seventy-two hours, to the attention of the judge in the case, who is responsible for carrying out subsequent judicial acts.

4 - The interception and recording provided for in the previous paragraphs can only be authorized, regardless of the ownership of the means of communication used, against:

a) suspect or accused;

b) person who serves as an intermediary, for whom there are well-founded reasons to believe that he or she receives or transmits messages destined for or originating from a suspect or accused person; or

c) victim of crime, with their respective consent, actual or presumed.

5 - The interception and recording of conversations or communications between the accused and his defender is prohibited, unless the judge has well-founded reasons to believe that they constitute the object or element of a crime.

6 - Interception and recording of conversations or communications are authorized for a maximum period of three months, renewable for periods subject to the same limit, provided that the respective admissibility requirements are met.

7 - Without prejudice to the provisions of article 248, the recording of conversations or communications may only be used in another process, ongoing or to be initiated, if it resulted from the interception of a means of communication used by a person referred to in paragraph 4 and to the extent that it is essential to prove the crime provided for in paragraph 1.

8 - In the cases provided for in the previous number, the technical support of the conversations or communications and the orders that supported the respective interceptions are attached, upon order of the judge, to the process in which they are to be used as evidence, being extracted, if necessary, copies for this purpose.

Article 188 - Operations formalities

1 - The criminal police body that carries out the interception and recording referred to in the previous article shall draw up the corresponding record and prepare a report in which it indicates the passages relevant to the evidence, succinctly describes its content and explains its scope to discover the truth.

2 - The provisions of the previous paragraph do not prevent the criminal police body carrying out the investigation from being previously aware of the content of the intercepted communication in order to be able to carry out the necessary and urgent precautionary measures to secure the means of evidence.

3 - The criminal police body referred to in paragraph 1 brings to the attention of the public prosecutor, every 15 days from the start of the first interception carried out in the process, the corresponding technical support, as well as the respective files and reports.

4 - The public prosecutor brings to the attention of the judge the elements referred to in the previous paragraph within a maximum period of forty-eight hours.

5 - To find out about the content of conversations or communications, the judge is assisted, when he sees fit, by a criminal police body and appoints, if necessary, an interpreter.

6 - Without prejudice to the provisions of paragraph 7 of the previous article, the judge orders the immediate destruction of technical support and reports that are manifestly extraneous to the process:

a) that concern conversations in which the persons referred to in paragraph 4 of the previous article do not take part;

b) that cover matters covered by professional, official or state secrecy; or

c) whose disclosure could seriously affect rights, freedoms and guarantees;

All parties involved are bound by the duty of secrecy in relation to conversations of which they have become aware.

7 - During the investigation, the judge determines, at the request of the public prosecutor, the transcription and addition to the records of the conversations and communications essential to justify the application of coercive or asset guarantee measures, with the exception of the identity and residence term.

8 - Upon completion of the investigation, the assistant and the accused may examine the technical support of the conversations or communications and obtain, at their own expense, a copy of the parts they wish to transcribe to add to the process, as well as the reports provided for in no. 1, until the end of the deadlines for requesting the opening of the investigation or submitting the defense, respectively.

9 - Only conversations or communications that:

a) the public prosecutor has the criminal police body that carried out the interception and recording transcribed and indicated as evidence in the indictment;

b) the defendant transcribes it from the copies provided for in the previous paragraph and attaches it to the request for opening the investigation or to the defense; or

c) the assistant transcribes it from the copies provided for in the previous paragraph and adds it to the process within the deadline set to request the opening of the instruction, even if he does not request it or does not have the legitimacy to do so.

10 - The court may listen to the recordings to determine the correctness of the transcriptions already made or the addition of new transcriptions to the case file, whenever it deems it necessary to discover the truth and ensure a good decision in the case.

11 - People whose conversations or communications have been listened to and transcribed may examine the respective technical support until the end of the trial hearing.

12 - Technical support relating to conversations or communications that are not transcribed to serve as evidence are kept in a sealed envelope, upon order of the court, and destroyed after the decision that puts an end to the process becomes final.

13 - After the final judgment provided for in the previous paragraph, the technical supports that are not destroyed are kept in a sealed envelope, next to the process, and can only be used in the event of an extraordinary appeal.

Article 189 - Extension

1 - The provisions of articles 187 and 188 are correspondingly applicable to conversations or communications transmitted by any technical means other than the telephone, namely electronic mail or other forms of data transmission via telematics, even if they are stored on a medium digital, and the interception of communications between those present.

2 - The obtaining and addition to the records of data on cell phone location or records of conversations or communications can only be ordered or authorized, at any stage of the process, by order of the judge, in relation to crimes set out in paragraph 1 of article 187 and in relation to the people referred to in paragraph 4 of the same article.

Article 190 - Nullity

The requirements and conditions referred to in articles 187, 188 and 189 are established under penalty of nullity.