

This file corresponds to part 2, book 6 (Preliminary phases), title 1 (Instruction) of the Portuguese criminal procedure code.

Chapter I - General Provisions

Article 286 - Purpose and Scope of the Instruction

1 - The instruction aims to provide judicial confirmation of the decision to file charges or close the investigation in order to submit the case to trial or not.

2 - Instruction is optional.

3 - There is no place for instruction in special procedural forms.

Article 287.^o - Request to Open the Instruction

1 - The opening of the investigation may be requested within 20 days from notification of the indictment or filing:

a) By the accused, in relation to facts for which the public prosecutor or the assistant, in the case of proceedings dependent on private accusation, have brought charges; or

b) By the assistant, if the procedure does not depend on a private accusation, in relation to facts for which the public prosecutor has not brought charges.

2 - The request is not subject to special formalities, but must contain, in summary, the factual and legal reasons for disagreement with the accusation or non-accusation, as well as, whenever applicable, an indication of the acts of investigation that the applicant intends for the judge to carry out the evidence that has not been considered in the investigation and the facts that, through both, it is hoped to prove, with the provisions of paragraphs b) still applicable to the assistant's request. and d) paragraph 3 of article 283, with no more than 20 witnesses being able to be appointed.

3 - The request can only be rejected because it is out of time, due to the judge's incompetence or due to the legal inadmissibility of the instruction.

4 - In the order opening the investigation, the judge appoints a defender to the accused who does not have a lawyer appointed or appointed defender.

5 - The order opening the investigation is notified to the public prosecutor, the assistant, the accused and his defender.

6 - The provisions of paragraph 14 of article 113 apply.

Article 288 - Direction of Instruction

1 - The direction of the investigation is the responsibility of an investigating judge, assisted by the criminal police bodies.

2 - The rules of jurisdiction relating to the court are correspondingly applicable to the investigating judge.

3 - When the competence for the investigation belongs to the supreme court of justice or the relationship, the instructor is appointed, by lot, from among the judges of the section and is prevented from intervening in subsequent acts of the process.

4 - The judge independently investigates the case submitted for investigation, taking into account the indication, contained in the request for the opening of investigation, referred to in paragraph 2 of the previous article.

Article 289 - Content of the Instruction

1 - The instruction is formed by the set of acts of instruction that the judge deems necessary to carry out and, obligatorily, by an instructional, oral and contradictory debate, in which the public prosecutor, the accused, the defender, the assistant and your lawyer, but not the civil parties.

2 - The public prosecutor, the accused, the defender, the assistant and his lawyer may attend the acts of investigation requested by any of them and raise requests for clarification or request that questions be asked that they deem relevant to discovering the truth.

Chapter II - Acts of Instruction

Article 290 - Acts of the Investigating Judge and Delegable Acts

1 - The judge performs all acts necessary to achieve the purposes referred to in article 286, paragraph 1.

2 - The judge may, however, grant criminal police bodies the responsibility of carrying out any steps and investigations relating to the investigation, except in the case of the interrogator of the accused, the examination of witnesses, acts that by law are committed exclusively within the jurisdiction of the judge and, in particular, those referred to in article 268, paragraph 1, and article 270, paragraph 2 .

Article 291.^o - Order of Acts and Repetition

1 - Acts of investigation are carried out in the order that the judge considers most convenient for ascertaining the truth. The judge rejects required acts that he understands are not of interest to the investigation or serve only to delay the progress of the process and performs or orders ex officio those that he considers useful.

2 - Only a complaint may be filed against the order provided for in the previous paragraph, and the order that decides it cannot be appealed.

3 - The acts and evidentiary measures carried out in the investigation are only repeated if the legal formalities have not been observed or, having been requested, when their repetition proves to be indispensable for achieving the purposes of the investigation.

4 - Witnesses who must testify about the aspects referred to in article 128, no. 2, are not questioned.

Article 292 - Admissible Evidence

1 - All evidence that is not prohibited by law is admissible in the investigation.

2 - The investigating judge interrogates the accused and listens to the victim, even if he or she has not become an assistant, when deemed necessary and whenever they request it.

Article 293.⁹ - Order of Appearance and Notification

1 - Whenever it is necessary to ensure the presence of any person in an act of investigation, the judge issues a warrant for appearance which includes the identification of the person, indication of the day, place and time at which he or she must appear and the mention of the sanctions incurred in the case of unjustified absence.

2 - The order for appearance is notified to the interested party at least three days in advance, except in cases of duly substantiated urgency, in which the judge may leave the person notified only the time necessary for appearance.

Article 294.⁹ - Declarations for Future Memory

On its own motion or upon request, the judge may, during the investigation, examine witnesses, take statements from the assistant, civil parties, experts and technical consultants and face-to-face, under the terms and for the purposes referred to in article 271 .⁹

Article 295 - Certificates and Registration Certificates

Records and registration certificates, namely the defendant's criminal record certificate, which are not yet included in the file and which appear to be foreseeably necessary for the investigation or trial that may take place and the determination of the jurisdiction of the court, are added to the file.

Article 296 - Instruction Report

The evidentiary measures carried out during the investigation are documented by recording or recording, with the requests presented by the prosecution and the defense at this stage, as well as any documents relevant to the assessment of the case, being added to the process.

Chapter III - Instructional Debate

Article 297 - Designation of the Date for the Debate

1 - When he considers that there is no place for the practice of acts of instruction, particularly in cases where they have not been requested, or within five days of the practice of the last act, the judge designates, when he has not yet done so, the day , time and place for the instructional debate, which is set for the earliest possible date, so that the maximum duration of the instruction can in any case be respected.

2 - The provisions of paragraphs 3 and 4 of article 312 are correspondingly applicable.

3 - The designation of a date for the investigative debate is notified to the public prosecutor, the accused and the assistant at least five days before it takes place. In case of connection of processes under the terms of article 24, no. 1, subparagraphs c), d) and e), the designation of the date for the pre-trial debate is notified to the defendants who have not requested the pre-trial.⁴ - The designation of a date for the debate is also notified, at least three days before it takes place, to any witnesses, experts and technical consultants whose presence in the debate the judge considers essential.

5 - The provisions of articles 116, paragraphs 1 and 2, 254 and 293 are correspondingly applicable

Article 298 - Purpose of the Debate

The investigative debate aims to allow a discussion before the judge, in an oral and contradictory manner, about whether, during the investigation and investigation, sufficient evidence of fact and elements of law emerge to justify the defendant's submission to trial.

Article 299 - Supervening Acts

1 - The designation of a date for the debate does not affect the judge's duty to carry out, before the debate or during it, acts of investigation whose interest in discovering the truth has in the meantime been revealed.

2 - The acts referred to in the previous paragraph are carried out in compliance with the formalities established in the previous chapter.

Article 300 - Postponement of the Debate

1 - The debate can only be postponed if it is absolutely impossible to take place, namely due to a serious and legitimate impediment for the accused to be present.

2 - In case of postponement, the judge immediately designates a new date, which cannot exceed the previously set date by 10 days. The new date is communicated to those present, ordering the judge to notify those absent whose presence is necessary.

3 - If the accused renounces the right to be present, the debate is not postponed due to his absence, and he is represented by the appointed or appointed defender.

4 - The debate can only be postponed once. If the defendant is absent on the second scheduled date, he or she is represented by the appointed or appointed defender.

Article 301 - Discipline, Direction and Organization of the Debate

1 - The discipline of the debate, its direction and organization are the responsibility of the judge, who holds, where necessary, powers corresponding to those conferred by this code on the president, at the hearing.

2 - The debate takes place without being subject to special formalities. The judge ensures, however, the contradiction in the production of evidence and the possibility for the accused or his defender to comment on it last.

3 - The judge refuses any request or proof that goes beyond the indicative nature of that required at this stage.

Article 302 - Course of the Debate

1-The judge opens the debate with a summary statement on the acts of investigation he has carried out and on the questions of evidence relevant to the investigative decision and which, in his opinion, are controversial.

2 - He then gives the floor to the public prosecutor, the assistant's lawyer and the defender so that they, if they wish, can request the production of additional indicative evidence that they propose to present, during the debate, on concrete controversial issues.

3 - The evidence is produced under the direct guidance of the judge, who decides, without formalities, any questions that arise in this regard. The judge may directly address those present, asking them any questions he deems necessary to achieve the purposes of the debate.

4 - Before closing the debate, the judge gives the floor again to the public prosecutor, the assistant's lawyer and the defender so that they, if they wish, can summarize their conclusions on the sufficiency or insufficiency of the evidence collected and on questions of right on which the meaning of the instructional decision depends.

5 - A succinct reply is admissible, to be made only once, however, the defender, if asked to speak, is always the last to speak.

Article 303 - Amendment of the Facts Described in the Indictment or in the Request for Opening the Instruction

1 - If the investigation or the investigative debate results in a non-substantial change in the facts described in the indictment of the public prosecutor or the assistant, or in the request to open the investigation, the judge, ex officio or upon request, communicates the change to the defender, interrogates the accused about it whenever possible and grants, upon request, a period of time to prepare the defense not exceeding eight days, with the consequent postponement of the debate, if necessary.

2 - The provisions of the previous paragraph do not apply if the change found determines the incompetence of the investigating judge.

3 - A substantial change in the facts described in the accusation or in the request for opening the investigation cannot be taken into account by the court for the purpose of ruling in the ongoing process, nor does it imply the extinction of the case.

4 - The communication of a substantial change in the facts to the public prosecutor is valid as a complaint so that it can act on the new facts, if these are independent in relation to the object of the process.

5 - The provisions of paragraph 1 are correspondingly applicable when the judge changes the legal classification of the facts described in the indictment or in the request for the opening of the investigation.

Article 304 - Continuity of the Debate

1 - The provisions of article 328, paragraphs 1 and 2, are correspondingly applicable to the instructional debate.

2 - The judge interrupts the debate whenever, during the course of it, he realizes that it is essential to carry out new acts of instruction that cannot be carried out during the debate itself.

Article 305 - Minutes

1 - Minutes are drawn up of the instructional debate, which, without prejudice to the provisions of article 99, no. 2.

2 - The minutes are signed by the judge and the court clerk who draws them up.

Chapter IV - Closing the Instruction

Article 306 - Maximum Instruction Duration Periods

1 - The judge closes the investigation within a maximum period of two months, if there are defendants in prison or under an obligation to remain in housing, or four months, if there are none.

2 - The two-month period referred to in the previous paragraph is increased to three months when the investigation has as its object one of the crimes referred to in article 215, paragraph 2.

3 - For the purposes of the provisions of the previous paragraphs, the period starts from the date of receipt of the request to open the investigation.

Article 307 - Instructional Decision

1 - Once the investigative debate is over, the judge issues an order of pronouncement or non-indictment, which is then dictated to the minutes, considered to have been notified to those present, and may justify by reference to the reasons of fact and law stated in the indictment or application opening instruction.

2 - The provisions of article 281 are correspondingly applicable, with the agreement of the public prosecutor.

3 - When the complexity of the case under investigation makes it advisable, the judge, at the end of the investigative debate,

orders that the case be brought to a conclusion in order to issue, within a maximum period of 10 days, the order of pronouncement or not pronouncement. In this case, the judge immediately communicates to those present the date on which the order will be read, with the provisions in the second part of paragraph 1 being correspondingly applicable.

4 - The fact that it was requested by only one of the defendants does not affect the judge's duty to remove from the investigation the consequences legally imposed on all defendants.

5 - The provisions of no. 5 of article 283.^o.

Article 308.^o - Order of Pronunciation or Non-Pronunciation

1 - If, by the end of the investigation, sufficient evidence has been collected that the assumptions on which the application of a sentence or security measure to the defendant depends have been met, the judge, by order, pronounces the defendant responsible for the respective facts ; otherwise, he issues an order of non-pronouncement.

2 - The provisions of article 283, paragraphs 2, 3 and 4, are correspondingly applicable to the order referred to in the previous paragraph, without prejudice to the provisions of the second part of paragraph 1 of the previous article.

3-In the order referred to in paragraph 1, the judge begins by deciding on nullities and other prior or incidental issues that he may be aware of.

Article 309 - Nullity of the Instructive Decision

1 - The pre-trial decision is null and void in the part in which it prosecutes the accused for facts that constitute a substantial change to those described in the indictment of the public prosecutor or the assistant or in the request to open the pre-trial.

2 - Nullity is argued within eight days from the date of notification of the decision.

Article 310 - Appeals

1 - The investigative decision that pronounces the defendant guilty of the facts contained in the public prosecutor's indictment, formulated in accordance with article 283 or paragraph 4 of article 285, is unappealable, even in the part in which it assesses nullities and other prior or incidental issues, and determines the immediate referral of the case to the competent court for trial.

2 - The provisions of the previous paragraph do not affect the jurisdiction of the trial court to exclude prohibited evidence.

3 - The order rejecting the allegation of nullity set out in the previous article may be appealed.