

This file presents practical cases of the application of the criminal code and the criminal procedural code.

Case 1:

A) A is strongly suspected of having committed a crime of qualified computer fraud (article 221, no. 5, a) of the CP) in conjunction with a crime of document forgery (article 256, no. 1, b) of the CP). A is being detained for the purpose of applying a coercive measure. In fact, according to the opinion of the competent entity, there is strong evidence that A committed those two crimes and there is a risk of A going away to Cape Verde (since he has dual nationality) as well as disturbing...

aa) A is brought before the entity that has the authority to apply the requested coercive measure. State which procedures must be observed and whether it is legitimate/legal to apply the requested measure (2 vals). Competent entity that believes it is necessary to apply MC - MP

Competent entity for the application - JIC

Application requirements - danger of escape and danger of disturbing the investigation

OPH - strong evidence + intentional crime + crime with a sentence of more than 3 years + other measures being insufficient or inadequate - can be applied/legitimacy and legality assumed (221.º no. 5 CP)

Procedures - hearing of the defendant duly informed of the facts/procedural elements relevant to the application and with the right to consult the records; reasoned order of application

Articles 194 (maxime no. 1, no. 4, no. 6, no. 7, no. 8), 201 and 204 no. 1 a) and b) CPP

bb) However, the last entity understood that, given the crime of fraud relating to means of payment other than cash (in this case a bank card), given the frequency of the crime (as well as its social alarm) and the need to combat this phenomenon, the measure to be applied should be preventive detention, which is why it has been decreed.

State the legitimacy/legality of such a decision and its basis (1.5 vals).

PP - strong evidence + intentional crime + other measures being insufficient or inadequate + provision expressed in article 202.º no. 1 d) - it is verified

JIC may apply, in certain circumstances, a more serious measure than requested/presupposed legitimacy and legality 194.º no. 2 CPP

B) A trial hearing was declared open, with A being accused of those two crimes.

a) Which court is competent to proceed with the trial and what regime must be observed if A is not present at this time (2.5 val).

- the quantitative criterion applies

- Calculation of the maximum penalty applicable to the 2 crimes

- Collective court would have jurisdiction - art. 14/2, b)

- However, the MP could understand that the sentence should not exceed 5 years (16/3)

- In this case, the single court would have jurisdiction, but could not punish with a sentence exceeding 5 years (16/4)

- A was appointed Defendant, therefore he has TIR and will have been notified of the date of the trial hearing - arts. 58.º, 113.º nº1 c) and 196.º/ 1, 2 and 3, c) and d) CPP

- Thus, if you do not appear, the prerequisites are met for the absentee trial regime to be applied - art. 333.º nº1 CPP

- Exception to the rule of mandatory presence of the Defendant at the trial hearing - art. 332nd CPP; art. 32nd nº6 CRP

b) During this hearing, it was requested, at the request of the Public Prosecutor's Office, the hearing of statements made by A within the scope of the procedure for applying the coercive measure, referred to above. Analyze the legitimacy of this request. (1.5 val).

It appears to be a legitimate request: Article 357, paragraph 1 b) - article 141, paragraph 4 - investigating judge (judicial authority); presence of rights defender/warning-

c) At the request of the defense (that is, A), an expert analysis was ordered of a document contained in the indictment to find out whether it had been subject to alteration. (In fact, the indictment stated that A had altered the content of the document to then deceive the victim (and access his bank card and code), a person with psychomotor difficulties and already of age; fact (i.e., the alteration of the document) which A always denied - a fact was at stake that would be very important for the crit...

An expert opinion is at stake - means of proof; Given the circumstances described, the rules of expertise can be followed (new expertise); however, if it is not possible to clarify, the court must follow the principle in dubio pro reo; if there is a reasonable doubt about a fact (therefore, matter of fact and evidence) relevant to the defendant's responsibility or punishability, the court must assess it in favor of the defendant, in which case considering the relevant circumstance for defense as proven; sense of the principle...

d) After analyzing the evidence, produced at the hearing, the Court was convinced that, in fact and in the last instance, A had illegitimately appropriated the bank card (and its code), after having stolen it from the victim (and not, as described in the indictment and as mentioned above, obtained through deception on the victim); thus, A would have also committed a crime of qualified theft (article 204, no. 1, d, due to the vulnerability of the victim) of the CP, a crime that could be applied due to the fact...

Given this conviction of the court, how should it proceed? Justify the solution (3 vals).

It cannot condemn; under penalty of nullity of the decision (article 359, paragraph 1 and article 379, b)). New fact - different crime -

substantial change of facts; justification: principle of accusation and established limits. Autonomizable or non-autonomizable fact.

Case 2:

A is being heard, already as a defendant in a case, indicted for committing a crime of persecution (art. 154.<sup>o</sup>-A of the CP) and three crimes of illicit photographs (article 199.<sup>o</sup>, no. 2 of the CP); in fact, through messages sent as well as frequently standing near his place of work, A has - as the competent authority understands - repeatedly harassed B, causing him uneasiness or fear. With the authorization of the competent entity, the various messages sent were collected, the photographs...

Two months after the facts and crimes referred to were made known to it, the competent entity understands that the elements already included in the process, that is, essentially that documentary evidence (in essence, the only relevant means of proof, which was from B's cell phone), are conclusive and do not raise any questions for the purpose of proving the crime and who was its agent (that is, A), adding that further steps are not justified.

Refer to the conditions that had to be observed for the process to reach this moment. Justify legally and doctrinally, (3 vals) - Principle of officiality (principle of procedural promotion) - 219th, no. 1 CRP + 48th CPP

- Limitation to the principle of officiality
- Both crimes are semi-public - criminal procedure depends on complaint
- having filed a complaint, the MP has the legitimacy to