This file is part of practical summaries of the criminal process.

1. THE FIRST JUDICIAL INTERROGATORY OF THE ARRESTED ACCUSED

1.1. SCOPE OF APPLICATION OF ARTICLE 141 CPP

It applies in cases of detention of the accused (254º-257º CPP), even though they do not meet the requirements of summary judgment (where prior presentation to the JIC is unnecessary to confirm the legality of the detention), aiming at the application of a measure of coercion or presentation before a judicial authority in a procedural act.

1.1.1. DETENTION METHODS

(a) Flagrant crime (255th and 256th CPP) – the judicial authority (or people in the situation described in 255th/1-b CPP) proceeds with the arrest immediately following the commission of the crime (256th/1, 1st part CPP), or in circumstances that meet the presumption of flagrant crime (256º/2 CPP: pursuit of the agent, presence of signs/objects that indicate that the agent committed a crime). NOTE: if a crime depends on a complaint, detention continues when the holder exercises the respective right, while if it depends on a private accusation there is no place for detention (255º/3 and 4). (b) Outside of flagrante delicto (257th CPP) – the arrest can only be made after an arrest warrant has been issued by the judge, the MP or a criminal police authority (if the detention is urgent, being subsequently confirmed by the JIC, 257th/ 2 and 258º/2), if there are no well-founded reasons why the defendant would not present himself voluntarily.

1.1.2. PARTICULAR CASE OF THE SUMMARY PROCESS (381st-391st CPP)

(a) Once the assumptions of the summary process have been verified, the defendant detained in the act of committing a crime and presented to the Public Prosecutor's Office is immediately tried (there is no need for the intervention of a JIC within the period in which there will necessarily be a trial, where the legality of the detention will be determined per se), except for cases in which the defendant is released because it is concluded that the hearing cannot take place within 48 hours (382º/3 CPP), in which case, if there is a need to apply MC/MGP, the defendant is presented to the JIC for be heard (141º/4 CPP). (b) If the requirements are not met, the MP either releases the accused and continues with the investigation, or, and understanding the imperative of applying MC/MGP, presents the accused to the JIC to be heard (141º/4 and 194º /3 CPP).

1.1.3. DETENTIONS OUTSIDE THE FLAGRANT OFFENSE

Here the defendant is detained in execution of a warrant, justified by the existence of well-founded reasons to consider that he would not appear spontaneously before the judicial authority and within the established deadline. It is therefore intended to ensure the presence of the defendant in a procedural act or the application of MC/MGP. (a) The obligation of the first judicial interrogation to apply MC/MGP – results from the correlation of art. 28º/1 and 32º/1 of the CRP, being an outcrop of the defendant's right of defense: the arrest warrant does not constitute a judgment of responsibility in relation to an agent (254º/1 CPP), so the convenience must be analyzed taking into account the several factors, especially the defense exercised by the defendant regarding the alleged facts. PROBLEM – in the case of application/execution, in the same process, of a measure of coercion or detention of a defendant previously detained or deprived of liberty, based on knowledge of new facts, a new judicial interrogation is required, giving a new and the defendant is given due opportunity to comment on the new set of facts imputed to him and to exercise his right of defense (ratio 141º). (b) The competence to request the application of MC/MGP - taking into account the principle of the accusatory structure, it is up to the MP to request it and because they constitute a limitation of the defendant's freedoms and guarantees, the intervention of the judicial power (of the JIC) who decides on his opportunity after hearing the defendant (JIC as “judge of freedoms”). (c) Detention for execution of preventive detention ordered in the order of indictment of a persistent defendant (300º/3) – in the first, the order is a confirmation by theJIC of the viability of the MP's accusation, but knowing the JIC of absolutely decisive material issues (e.g., intent of the agent or error? Negligence?) such an assessment will correspond to a first assessment of the accusatory claim since only the final decision, in judgment, is that it is equivalent to a judicial assessment of the defendant's responsibility, therefore, not concluding by characterizing the order of indictment as a means of establishing the agent's guilt, once issued in the case of the defendant's default, the detention has must necessarily be followed so that the defendant's right to defense can be exercised. (d) Detention for the execution of preventive detention ordered in the case of order of receipt of the indictment (311º/2 CPP) - with the interrogation taking place with the defendant free, the accusation received by the judge and pre-trial detention decreed in the order of receipt (which functions as process sanitation, 311º/2), even if the defendant is not persistent, his interrogation must continue (141º CPP).

1.2. DETERMINATION OF THE COMPETENT CRIMINAL INSTRUCTION JUDGE

1.2.1. COMPETENCE OF THE CRIMINAL INSTRUCTION JUDGE

(a) General criterion (288º/2 CPP) – the competent JIC is determined in accordance with the rules of jurisdiction of the court: (a.1) jurisdiction due to the territory (19º CPP) – the JIC is competent for a certain case the area where the consummation occurred, the place where the agent operated (if a crime involving the death of a person), the place where the last act was carried out or the consummation ceased (if a continuing crime), the place of the last act of execution (if crime has not been completed) or the special hypotheses of art. 20-23rd CPP. (b) Special rule (142º/1 CPP) – if there is a well-founded fear that the detainee cannot be presented (safely) to the competent JIC, within the maximum period for interrogation, such act may be carried out by the competent JIC in the

place where there is arrest has been made.

1.2.2. PRINCIPLE OF THE NATURAL JUDGE (32º/9 CRP)

No case can be removed from the competent court, avoiding the creation of ad hoc courts. However, there are those who defend, within the scope of the JIC's competence for interrogation, the possibility of manipulation (by the MP) of the constitutional precept: if the detention occurs during the holiday period, the interrogation is conducted by the judge on shift, which may vary in function of the MP's choice regarding the moment of detention. (a) Applicability of the natural judge rule to the JIC – the legal judge is not only the one who makes the final sentence, but all those who participate in the decision-making process (GOMES CANOTILHO AND VITAL MOREIRA), in addition, if we take into account the fact that the JIC is forced to decide (in the decision order) material issues, then if we share the position that the «principle only applies to judges called to decide on issues submitted to court» (JORGE MIRANDA) for this reason the principle applies -á (indirect route) to the JIC. (b) Specific violation of the principle – the application of pp. from the natural judge to the JIC is related to the possibility of the latter deciding material issues, for this reason, the shift judge chosen during the vacation period is determined in accordance with this pp., with the choice of the moment of detention being made by the MP (257º/1 CPP) as legitimate as that of art. 142º/1 CPP, so there is no violation of the aforementioned principle, especially because the JIC may not be the trial judge (if so, it will be a chance).

1.3. DEADLINE FOR PRESENTING THE ACCUSED AND DURATION OF INTERROGATORY

1.3.1. CONSTITUTIONAL PERSPECTIVE IN PORTUGUESE LAW (28º/1 CRP)

The mandatory deadline is due to the need to limit the period of administrative detention, which is a detention not validated by a judicial entity. Therefore, according to the interpretation of the TC in the AC. 565/2003 and 135/2005, the constitutionality of the interrogation is not in question as long as the detainee is handed over to the JIC within 48 hours, ending the situation of administrative detention, therefore giving the judicial assessment of the detention p.JIC link that determines its convenience and legality.

1.3.2. INTERPRETATION OF THE EUROPEAN COURT OF HUMAN RIGHTS

The detention of a defendant for more than 48 hours, even if part of that time elapses between the defendant's delivery to the JIC and the actual start of interrogation, violates art. 5th§1 ECHR, which is in force in domestic law (8th/1 and 2 of the CRP). Thus, accepting such guidance (see AC. Zervudacki v. França, 2006), art. 28º/1 CRP and 141º/1 CPP must be understood as follows: the period of 48 hours must be the limit for the effective beginning of the interrogation (but isn't it then a limit period for administrative detention?), knowing that not having the interrogation a limited duration period (141º/5 CPP), and because it is a privileged moment in the exercise of the right of defense, we cannot condition the duration of this procedural act, as well as the legality of the detention, therefore the detention period ends with the beginning of the interrogation (not its end).

1.3.3. CONSEQUENCES OF ILLEGAL DETENTION

If the deadline is not observed, it is a situation of illegal detention, which allows the defendant to request habeas corpus relief due to illegal detention (220º/1-a CPP). (a) The influence of illegality in the interrogation - compensation for damages suffered as a result of illegal detention are compensated by the request for compensation and the civil liability of the State (225º/1-a CPP), as well as by the criminal liability of those who carried out the interrogation arrest and presented the defendant to the JIC (for the crime of abuse of power, 382nd CP). (b) The influence of illegality on the obligation of interrogation - the majority of jurisprudence understands that interrogation does not lose its obligation due to the fact that 48 hours have passed, and the same must be done in the shortest possible time, resulting from the provision of the habeas corpus (220th CPP), especially because this is a privileged moment for the exercise of the right of defense, so it would be strange if the untimely delivery of the defendant to the JIC resulted in the (negative) consequence of preclusion of its obligation.

1.4. STRUCTURE AND CONTENT OF THE INTERROGATORY

1.4.1. IDENTIFICATION OF THE ACCUSED

The defendant must truthfully answer the questions asked, and must be informed of this duty, as well as the consequences of its violation (incurs criminal liability – see 359º/2 CP + 61º/3-b and 141º/3 CPP). PROBLEM – the constitutionality of art. 61º/3-b and 141º/3 CPP in relation to the defendant's criminal record for violating the principle of presumption of innocence. However, the TC, in the AC. 372/98, rejected this interpretation because he considered that the principle is not violated since it is not a question of using the defendant's statements as a means of influencing the evidence, but only of collecting indispensable elements about the defendant's criminal situation, since he has not yet whether you are in a position to know such information. In fact, after the first interrogation, the judge can impose MC/MGP on the defendant and this knowledge is essential, which he cannot fail to reveal in order to choose the appropriate measure. Furthermore, from the very ratio of the interrogation and its consequences (validation of detention and possible application of MC), that response has no influence on the judicial decision (because the criminal past does not conflict with the current assessment of the defendant's responsibility).

1.4.2. JIC'S DUTY TO INFORM THE ACCUSED, PARTICULARLY OF HIS RIGHTS (141º/1-a CPP)

If the information is omitted or provided incompletely, any evidence collected as part of the testimony will be considered prohibited as it is considered an illegitimate intrusion into the privacy of the accused (126º/3 CPP), and cannot be used. However, if the defendant at a

later time and after fulfilling the duty to provide information, reaffirms the statements made previously, the previous nullity is considered remedied, so we will have new evidence thatproduce the normal effects.

1.4.3. COMMUNICATION TO THE DEFENDANT

1.4.3.1. OF THE GROUNDS FOR DETENTION (141º/4-b CPP)

If the arrest is in flagrante delicto, the respective reasons are part of the arrest report, so that, in principle, it is sufficient to read it; but if the arrest is in execution of an arrest warrant, then the facts that motivate the arrest are those that motivated the issuance of the respective document (257º/1, in fine, and 258º/1-c CPP), namely the reasons that led to the belief that the defendant would not present himself voluntarily to the judicial authority.

1.4.3.2. SPECIFIC FACTS IMPUTED (141º/4-c CPP)

Because the grounds for detention are not directly related to the facts imputed, especially since the investigation may proceed, with the defendant at liberty, investigating the occurrence of the facts imputed to him. Thus, this covers the set of facts imputed to the defendant and all the circumstances of time, place and manner of their occurrence that are already known. The violation of this duty constitutes a procedural irregularity (123º CPP). The conference between the defendant and the defense attorney is permitted, although the defendant has the right to it at any time during the interrogation (all the more so in relation to art. 143º/4 CPP).

1.4.3.3. ELEMENTS OF THE PROCESS THAT INDICATE SUCH FACTS (141º/4-d CPP)

As a corollary of the right of defence, however, the investigation (led by the Public Prosecutor's Office) is still ongoing, and it is therefore up to the JIC to consider which elements may or may not be revealed, knowing that this decision may be appealed by the Public Prosecutor's Office, if the disclosure jeopardises the investigation, or by the defendant, if the elements that were not revealed to him justify the order to apply MC/MGP. But what criteria should guide the JIC's consideration? If the interrogation has an essentially guarantor function and aims to allow the defendant to defend himself, then the elements of the case cannot be revealed only for the benefit of interests clearly superior to those, therefore, the JIC cannot reveal an element when the revelation jeopardizes the investigation, hinders the discovery of the truth or creates danger (to the life, integrity and freedom) of the procedural participants and victims of the crime (differently, the law provides for a stricter criterion in art. 194º/5-b CPP for the order to apply MC/MGP). NOTE that art. 141º/4-d, in fine CPP (like 194º/5-b, in fine CPP) exempts from protection situations that would justify, especially in relation to property crimes or crimes against sexual self-determination, violating art. 25th/1, 26th/1 and 62nd/1 CRP (e.g., if in a crime of child sexual abuse, 171st CP, elements were revealed that put the sexual self-determination of the victims at risk, the BJ itself protected by the incrimination would be violated). (a) Reinterpretation of art. 141º/4-d CPP (PAULO PINTO 1O TC in AC. 416/2003 and 607/2003 understood that the possibility of not revealing elements of the case to the defendant without respecting the stricter limits of art. 194º/5-b CPP, implies that the investigation is seriously compromised or the discovery of the truth is made impossible, and therefore concluded that art. 141º/4-d, ab initio CPP, is unconstitutional. DE ALBUQUERQUE) - «… whenever its communication does not seriously compromise the investigation, does not make it impossible to discover the truth, nor create a danger to the life, physical or mental integrity or freedom, sexual self-determination or property of the procedural participants or victims of the crime.».

1.4.4. CONTRADICTION AND THE DEFENDANT'S RIGHT TO DEFENSE

The defendant must be given the opportunity to speak out on everything he deems relevant, while preserving his right to remain silent (61º/1-d CPP), and may freely select from among the facts imputed to him and the elements of the case that indicate them, those on which he should speak out.

1.4.5. INTERVENTION OF THE PUBLIC PROSECUTOR'S OFFICE AND THE DEFENDER

The absence of both in the interrogation generates an irremediable nullity of the acto (119º, al. b) and c) and 141º/2 CPP), although their participation in this act is limited, and they cannot interfere in it (except to argue nullities), with a specific moment being reserved for them at the end to request requests of clarifications to the defendant, through the JIC, knowing that it is the latter who decides, by non-appealable order, the relevance of the same questions (141º/6 CPP).

1.5. APPLICATION OF COERCION MEASURE OR PROPERTY GUARANTEE INSERTED IN THE INTERROGATORY

The request for the application of MC/MGP is made by the MP at the first judicial interrogation and must be decided there if they verify, in casu, the existence of factual circumstances that justify its application (and the facts that justify the detention do not coincide with those of MC/MGP): “pericula libertatis” (204th CPP) is required – or danger of escape, or disturbance of the process, or danger to evidence, or continuation of criminal activity or disturbance of order and tranquility public. The application order must contain the elements mentioned above (194º/5-d CPP), and the JIC must complete it with the facts that justify the fulfillment of the general application requirements (which are not cumulative!), being evident, the mandatory hearing of the defendant (in relation to all the facts on which the decision to apply MC/MGP may be based) so that the contradiction is ensured: by virtue of the regime of nullities and procedural irregularities (122nd and 123rd CPP), which constitute a defect the act in question and subsequent ones, we must proceed with a tangible separation between the two acts, treating the incident of application of coercive measures independently once the first judicial interrogation has ended, also giving the floor to the MP and defender.

1.6. CONCLUSION

Whenever the defendant is detained, and the prerequisites for summary judgment are not met, a judicial assessment of the (administrative) act of detention by the JIC is necessary, as the "judge guaranteeing the defendant's freedoms". The JIC must be competent for the case under analysis, unless, and in the interest of the accused, it is assigned to another, under penalty of detention exceeding the legal period of 48 hours (counting from the detention until the beginning of the first interrogation). Once the interrogation has begun, a certain sequence of acts must be observed (see 141º CPP).

2. PRACTICAL ISSUES RELATING TO ARCHIVING

2.1. THE CLOSURE OF THE INQUIRY

Because a wrong decision can compromise the justice of the final decision, hasty filing or indictment (a consequence of the pressure of procedural speed) or unjustified can lead to wrong results from a material point of view.

2.1.1. MAXIMUM DURATION TIMES FOR THE INQUIRY (276th CPP)

Once these have been overcome, can we talk about the ope legis closure of the investigation? And will the prosecution be irreparably affected by the violation of deadlines? Among us, the deadlines are merely regulatory in nature, so their violation only constitutes a cause of irregularity (except in cases of prescription, 118th ss. CP), even though non-compliance with these deadlines can be combated through the request for procedural acceleration (108th and 276th /6 CPP) and be the cause of disciplinary liability (a solution that is not in line with the principle of the Rule of Law and the requirements of a fair process judged within a reasonable time, 6th ECHR).

2.1.2. MATERIAL CRITERIA FOR DETERMINING THE TERM OF THE INQUIRY

Only when all steps (unfavorable and favorable to the defendant) aimed at discovering the truth have been completed, according to objective criteria (53rd CPP), can the investigation be concluded. The same applies if a coercive measure deprivation of liberty is applied (201st and 202nd CPP), where the expiry of the maximum deadlines for its application (215th and 218th CPP) only leads to the extinction of the measures and the immediate release of the accused, without consequences on the validity of the procedural acts performed (217th and 218th/3 CPP).

2.1.3. CRITERIA OF SUFFICIENCY/INSUFFICIENCY OF INDICATES

OAt this stage, the MP must determine whether the evidence collected is sufficient to, if held at trial, determine the application of a sentence or security measure to the defendant, in accordance with the rules of experience and free conviction (127th CPP). If the evidence approaches the maximum degree (99%, e.g., if the defendant was arrested in flagrante delicto and confesses to the facts, the MP must charge) or minimum (1%, e.g., if the defendant denies the facts and has a secure alibi, the MP must file it) no problems arise. Different will be the borderline cases (50%), where favorable and unfavorable evidence balances each other (e.g., witnesses with contradictory versions), and in which the answer must be given depending on the consideration made in the specific case, however, the MP cannot accuse if he is not convinced of the conviction because the «prosecution order is not sufficient with a mere probability of conviction, but only a strong or high possibility can justify its deduction» (CONDE CORREIA and FIGUEIREDO DIAS).

2.1.3.1. ENOUGH INDICATES

Elements that, related and combined, persuade the agent's guilt, giving rise to the conviction that the defendant will be convicted of the crime he is accused of.

2.1.3.2. IN DUBIO PRO REO PRINCIPLE

The prognosis judgment made by the MP on the sufficiency or insufficiency of the evidence includes the future application of this principle and its consequences, so if the probability of conviction is so low that at trial, at least by virtue of pp. In dubio pro reo, the defendant will be acquitted, so charges should not even be brought. NOTE that the application of pp. mentioned is only mediate, because the MP is only limited to projecting its future application in discussion and trial hearings and to acting in accordance with this presumed future use of conviction/acquittal (because it is directly inapplicable to a probability judgment evidence).

2.1.3.3. THE PROBLEM OF THE LEGAL ISSUE

She is excluded from this judgment of probability, knowing that the MP cannot fail to accuse just because he knows the very low probability of conviction, under penalty of preventing the trial just because the MP shares a different conception from that of the Court (minority position in the doctrine, JCC and JFD) that is why art. 283rd CPP subjects the MP's decision to the sufficiency/insufficiency of the evidence (≠ prob./improb. of the conviction).

2.1.3.4. ORDER OF ACCUSATION

Once all the elements of the specific case have been considered, in accordance with the rules of common experience and free conviction, if the MP concludes that the evidence is sufficient (except for articles 280 and 281 CPP) he must issue an indictment order. NOTE: the MP must be guided by criteria of strict legality (219º CRP + 283º/1 CPP + 1º LAW 60/98 of 27/8) and objectivity (53º/1 CPP + 2º LAW 60/98) and never for obscure reasons that are irreconcilable with the Rule of Law, under penalty of committing the crime of denial of justice and malfeasance (369th CP).

2.2. THE ARCHIVE

(a) Types of archiving – see. the main ones set out in art. 277º/1 and 277º/2 CPP (consequence of the impossibility of continuing to

carry out criminal proceedings); without prejudice, archiving in case of exemption from sentence (280º CPP) and following compliance with the injunctions and rules of conduct imposed by the provisional suspension of the process (282º/3 CPP), which translate into the exercise of the criminal action itself. (b) Archiving with an objective plurality of grounds – the MP may close the investigation in relation to one of the crimes, for having collected sufficient evidence that the defendant did not commit it (277º/1), and file it in relation to another crime due to simple insufficiency of the evidence (277º/2). (c) Archiving with a subjective plurality of reasons – the grounds that support the archiving are different for each of the defendants.

2.2.1. ARCHIVING UNDER THE TERMS OF ART. 277º/1 OF CPP

It has three distinct causes:

2.2.1.1. When sufficient evidence was collected during the investigation,that the crime had not occurred (1st part)

There is a high/fair degree of certainty, which works in the negative ("there is no crime"), that the initial suspicions are unfounded from a factual point of view ("the events did not occur", e.g., the homicide victim did not died) or legal ("the facts occurred but do not constitute a crime", e.g., the damages were committed negligently, meaning that criminal liability is irrelevant, or because they were committed under a ground for excluding illegality or guilt 2). It is the lack of "facts that justify the application of a sentence or security measure to the defendant" (1º/1-a and 283º/3-b CPP) that supports the respective archiving order. But if the MP has doubts regarding the legal issue, he can choose the legal qualification most favorable to the defendant, pursuant to pp. in dubio pro reo? For the majority doctrine, no, therefore, in the case of doubt about the question of law, the MP must choose the one that is legally "regarded as more accurate" and the archiving that takes place arises (not from the application of the aforementioned pp.) because it is considered that the impunity of the facts is the most correct solution from a legal point of view.

2.2.1.2. When sufficient evidence is collected during the investigation that the defendant did not commit the crime (2nd part)

In other words, there is certainty of a crime and, at the same time, the certainty that the defendant did not commit those acts in any way (filing for reasons of fact). The problem is not the existence/legal qualification/justification of the crime, but rather the subjective and individual participation in its commission (as perpetrator or accomplice) – the act was committed by a stranger. This situation generally constitutes a partial archiving, because if the MP files in relation to a defendant, leaving the question of the perpetrator of the crime open, but must subsequently issue a final order of accusation/archiving regarding this last side issue in accordance with the evidence collected (e.g., order of archiving under the terms of 277º/1 in relation to Antonio Freitas because he did not commit the crime, and order of archiving under the terms of 277º/2 in relation to the unknown perpetrator, or order of indictment if the perpetrator is already known AA). In fact, it would even be uneconomical, irrational and inconsistent with the functional requirements of the systems, to impose on the MP the support of an accusation that he, from the beginning, does not believe.

2.2.1.3. When criminal proceedings are legally inadmissible (archiving for procedural reasons)

These are legal procedural presuppositions or impediments [p. e.g., ne bis in idem (29º/5 CRP), prescription (118º ss. CP), lack of filing of the complaint (49º CPP), lack of constitution as an assistant (50º CPP), incompetence (33º/4 CPP), etc] and, in these cases, even if sufficient evidence has been collected regarding the commission of the crime and its agent, the MP cannot promote criminal action. NOTE the impediment will be definitive (no ne bis in idem, amnesty or prescription) or provisional, not preventing a new investigation if the initial deficiency is overcome, because archiving is not a decision on the merits of the case it does not prevent a new decision on the same topic.

2.2.1.4. THE ABUSIVE USE OF THE PROCESS

On the part of the complainant or complainant, the MP must promote the conviction of those in the payment of a sum between 6UG and 20UG (277º/5 CPP, similar to 116º/2 CPP), without prejudice to the cumulation of the conviction in costs of the complainant who acted in bad faith or with serious negligence (520º/c CPP – unfounded complaint, narration of facts that do not correspond to reality or that have no serious basis for considering them to correspond to reality).

2.2.2. ARCHIVING UNDER THE TERMS OF ART. 277º/2 OF CPP

It contains two distinct hypotheses:

2.2.2.1. Insufficiency of evidence to verify the crime

Archiving for reasons of fact ("it is not even possible to demonstrate the occurrence of the fact", e.g., only after the corpse has been discovered and autopsied can we discover whether the motive(whether the death was natural, accidental, suicide or homicide), resulting in the highest possible degree of uncertainty, although here too the degree of insufficient evidence varies between a maximum degree and minimum suspicion, which never disappears (although some doubts always remain), contrary to what is provided for in art. 277/1 (where sufficient evidence was collected to prove the absence of a crime). NOTE that it is difficult to draw in abstract terms the line that separates "sufficient evidence" from "absence of crime", it has to be determined in concrete terms.

2.2.2.2. Insufficient evidence relating to the identification of the perpetrator(s) of the act

This is a case of archiving for factual reasons ("it is not possible to prove the perpetrator of the act"), where the degree of uncertainty and lack of knowledge is lower, because the doubt is only subjective (as to the subject of the action) given that there is evidence of the commission of the crime.

2.2.3. FILING IN THE CASE OF PRIVATE CRIMES

These crimes constitute an exception to the principle of officiality and granting the Public Prosecutor's Office the power to prevent the introduction of the facts into court, regardless of the will of the injured party, would mean revoking this exception. Therefore, once the investigations are concluded, the Public Prosecutor's Office must always notify the assistant so that, if he wishes, he can file a private charge (285º/1 and 69º/2-b CPP), even if the Public Prosecutor's Office does not do so (hence 515º/1-d CPP, unless the abstention is justified because the facts did not occur, do not constitute crimes, it was not the defendant who committed them or there is insufficient evidence), no matter how flagrant the filing situation may be, under penalty of denial of effective judicial protection because in these cases the assistant cannot request the opening of an investigation (287º/1-b CPP). NOTE: This does not mean that the Public Prosecutor's Office cannot or is not forced to file a case due to lack of legitimacy in cases where the injured party does not act as an assistant or refrains from making an accusation (50th and 277th/1 CPP).

2.2.4. THE GROUNDS FOR THE FILING ORDER

Whatever its nature, regardless of whether it is issued by courts stricto sensu or by the Public Prosecutor's Office, it must be reasoned and must specify the factual and legal reasons for the decision (205th CRP + 97th/5 CPP). The reasoning is essential because it allows the judge to reflect on the merits of the decision, establishes the purpose of the filing, guarantees an effective challenge and respective control of the decision (by the hierarchical superior or investigating judge). The grounds must be written in simple and precise language, expressed in a rigorous manner so that they are understandable by other procedural subjects and the community in general, avoiding the use of foreign words, neologisms and Latin/foreign expressions that have no legal value; they must not present contradictions and the various elements must be articulated and combined logically in order to create a univocal and conclusive meaning (because see Article 410/2-b of the Portuguese Criminal Procedure Code); they must be exhaustive, resolving all the issues raised by the subject matter, but they do not need to be converted into an “exhaustive record of the evidence collected”; side issues that are not relevant to the purpose of the filing are superfluous and must be avoided, as are citations, footnotes and complex discourse. Although the legislator did not provide for a rule regarding the scope and manner of the grounds for filing, its absence, in compliance with Article 410/2-b of the Portuguese Criminal Procedure Code, is a precept that should be avoided. legality (118th CPP) and given the impossibility of analogous application of art. 379 and 374/2 and 3/b CPP, it only gives rise to a mere irregularity. The quantum and type of reasoning depend on the issue in question and must be directed to it; in any case, the structure of the reasoning is as follows:

REPORT - Brief summary of the process, with 2 or 3 synthetic sentences that give an overall image of the process and that raise the issue to be decided;

FACT AND MOTIVATION OF THE FACT - Enumeration, in a logical and chronological manner, of the facts indicated (and not indicated), favourable and unfavourable, essential for resolving the issueto decide, the evidence used for that decision and the reason for its credibility;

LAW – Debate on the legal issue: on the typicality of the conduct, the illegality and the guilt of the agent;

CONCLUSION – Simple decision summary;

NOTIFICATIONS AND OTHER BUREAUCRATIC PROVISIONS.

2.2.4.1. IN CASES OF NON-EXISTENCE OF CRIME (277th/1-1st PART OF CPP)

vd. Annex 1

a) THE FACTS DID NOT OCCUR – we have to prove that there was no crime, where the analysis of the evidence collected gains preponderance, to the detriment of the legal issue, which is marginal.

b) THE FACTS OCCURRED BUT DO NOT CONSTITUTE A CRIME – we must demonstrate why the facts occurred and why they are legally and criminally irrelevant.

c) THE FACTS OCCURRED COVERING A CAUSE OF EXCLUSION OF ILLEGALITY OR GUILT – we must prove the typicality of the conduct and the exclusion of illegality or guilt.

2.2.4.2. IN CASES WHERE THE ACCUSED DID NOT COMMIT THE CRIME (277th/1-2nd PART OF CPP)

The order must indicate the reasons that demonstrate that the defendant did not commit the crime, ending with the statement that the defendant is unknown and that, despite the steps taken, it was not possible to identify or accuse this third party - vd. Annex 2.

2.2.4.3. IN CASES OF LEGAL INADMISSIBILITY OF THE PROCEDURE (277th/1-3rd PART OF CPP)

It translates into a simplistic explanation of the reasons for the decision, that is, the formal and preliminary explanation of the procedural impediment. Here the report, the legal origin of the impediment and the conclusion are, as a rule, sufficient (except in the case of prescription).

2.2.4.4. IN CASES OF INSUFFICIENCY OF INDICATORS TO VERIFY THE CRIME (277th/2-1st PART OF CPP)

Because this is a maximum degree of uncertainty, what is important is to highlight the negative element, that is, what is not indicated. The complaint, the qualification of the facts and the evidence (from an objective point of view) are sufficient.

2.2.4.5. IN CASES OF INSUFFICIENCY OF THE INDICATORS RELATING TO THE IDENTIFICATION OF THE AGENTS OF THE

CRIME (277th/2-2nd PART OF THE CPP)

Although there are certainties regarding the occurrence of the crime, there are no elements to identify the agent and it is these doubts and insufficiencies that must be highlighted. It will be sufficient to present the complaint with its legal qualification and the evidence collected (from a subjective point of view).

2.2.5. METHODS OF REACTION AGAINST THE ARCHIVED ORDER

Except in rare cases in which the defect results from the reasoning, the first act of the person concerned with a view to challenging it will obviously be to consult the file (86º/1 CPP). However, the archiving order can be challenged through hierarchical intervention or a request for the opening of an investigation. Jurisprudence has considered these alternative mechanisms, meaning that, once notified of the archiving order, the assistant can opt for one of the two objection mechanisms, which, however, cannot be used simultaneously. But how do you know which instrument to use in this specific case? Can the choice be arbitrary? No, we have to meet the purpose of each of them:

(a) Primary objective of the hierarchical intervention: the continuation of the poorly completed investigation - due to the configuration (legal, jurisprudential and doctrinal) of the investigation phase as a phase of judicial proof, this mechanism appears to be a preliminary phase of true complementing the investigation already carried out, extending the investigation to unexplored areas and carrying out a rigorous assessment of the evidence to decide whether it is sufficient or insufficiency.

(b) Main purpose of the investigation: judicial confirmation of the archiving decision (286º/1 CPP) – this is the phase that should preferably be used whenever the only intention is a new reading of the evidence already (sufficiently) collected or its legal relevance . PLEASE NOTE that the assistant cannot file charges for public and semi-public crimes in relation to which the MP has ordered the filing of the case, just as it is not possible to recoverbear to the List of the MP's order ordering the investigation to be archived because the allegation of lack of investigation (absolute nullity, 119º/d CPP) or its insufficiency (nullity dependent on argument, 120º/2-d CPP) which are not equivalent to forms of reaction against the goodness of the order but of reaction against its presuppositions, not calling into question the final decision (archiving) but the path that led to it (non-existence or insufficiency of the investigation) and, once the act is invalid , its effects can be destroyed through the mechanisms of nullity which, as an instrument of protection of the DLG, must be judged by the investigating judge (but the 5-day period of art. 120º/3-c CPP for arguing nullities must be combined with the 20-day deadline set for opening an investigation, 287º/1 CPP).

(c) Competition of private crimes and public or semi-public crimes (285th CPP) – the assistant must request the immediate opening of the hierarchical instruction/complaint and, at the same time, file a private accusation, because if he does not accuse, the MP will archive this part (277º/1-3ª).

2.2.5.1. HIERARCHICAL INTERVENTION

(a) Generalities – within 20 days from the date on which the opening of an investigation can no longer be requested, the immediate superior of the MP magistrate, on his/her own initiative (official intervention) or at the request of the assistant or complainant with the right to become an assistant, may determine that charges be drawn up or that investigations continue, indicating, in this case, the steps to be taken and the deadline for compliance (278º/1 and 2 CPP). NOTE: the interested party does not have to be appointed as an assistant.

(b) In the case of a plurality of crimes - intervention is not prevented from being partial, restricted to one or more crimes, which may require the separation of the processes, proceeding with one part for trial and continuing the investigation regarding the remainder (264º/5 and 30th CPP).

(c) Formalities of the request – identification of the process, the entity addressed and the factual and legal basis of the complaint, explained precisely and clearly – see. Annex 3.

2.2.5.2. THE REQUEST FOR OPENING INSTRUCTION

(a) Generalities – the assistant may request the opening of an investigation within 20 days from the notification of archiving and aims at judicial confirmation of this decision, in order to submit or not the case to trial (286º and 287º/1- bCPP).

(b) If the victim has not yet requested to be appointed as an assistant during the investigation - it is understood that nothing prevents the victim from requesting, at the same time, to be constituted as an assistant and, in the case If this is not done, the victim is subject to letting that period expire.

(c) Phenomena of extension of the 20-day period – this is a peremptory period, which can be extended under the terms of art. 107º/6 CPP, to which the concept of fair impediment also applies (107º/5 and 146º CPP), even allowing the act to be carried out within three working days following the end of the period, upon payment of the stipulated fine (145º/5, 6 and 7, applicable ex vi art. However, recourse to the figure of delay is not permitted.

(d) Plurality of assistants – the period finishing in last place will be valid (113º/12 and 287º/6 CPP).

(e) Power to request the opening of an investigation granted to the assistant – restricted to public and semi-public crimes for which the MP has not brought charges, because in relation to private crimes, the assistant is responsible for bringing charges (285th CPP) and the MP can only archive it if he has not deducted it (277th/1-3rd CPP) and, in this case, the assistant will have to comply (you cannot

appeal against yourself).
(f) The request for the opening of an investigation made by the assistant following the failure to bring the accusation by the MP: discussion of the legal qualification – it is this request that establishes the object of the process (303º/1 CPP), and must therefore malthough it contains within itself a kind of grafted accusation (283º/3 CPP), imputing to the defendant facts capable of forming part of a legal-criminal offense and justifying the application of a penalty or security measure to the defendant [see. B.C. TC 358/2004 of 19/5/2004 – the assistant, in the application, deduces "materially, an accusation, insofar as, through it, it is intended to subject the accused to trial for facts giving rise to criminal liability… The assistant The application must include all the elements mentioned in the paragraphs referred to in paragraph 3 of article 283 of the CPP. This requirement arises… from the defense guarantees and the accusatory structure»]. Not observing the requirements of art. 283º/3 CPP, the application is null and void, and any invitation to improvement is inadmissible [see. B.C. STJ 7/2005 of 12/5/2005 - «there is no place to invite the assistant to perfect the request for opening an investigation presented under the terms of art. 287º, no. 2, of the CPP, when it is silent regarding the synthetic narration of the facts that justify the imposition of a sentence on the defendant»]. PLEASE NOTE that it is not possible to request the opening of an investigation against strangers or for facts that have not been specifically defined.
(g) Formalities of the application – identification of the process, the entity to which it is addressed (if JIC is incompetent, there is cause for rejection of the application, 287º/3 CPP + LAW 3/99 of 13/2 + DL 168º-A/99 of 31 /5), the quality of the applicant and the nature of the request (the opening of the investigation) -> explanation of the factual and legal reasons for the disagreement with the archiving order (in a clear and coherent way, moving gradually, from the most favorable hypothesis to the least favorable to the assistant), ending with a type of accusation grafted with the indication of the facts that must be attributed to the accused and the respective legal provisions (283º/3-b and c) CPP) -> formulation of the requests (initiation of investigation and that, in the end, an order of indictment is issued) -> indication of the evidence [ATTENTION that not only is the simple reading of the evidence collected or its legal relevance at stake, it is essential to indicate the acts of investigation that are intended to be carried out, the means of proof that were not considered in the investigation and the facts through which proof is expected (287º/2 CPP). In the case of repeating steps already carried out, greater care is required in the reasoning to convince the judge that this is essential for the purposes of the investigation (291º/3 CPP)] -> joining of the duplicates, the power of attorney (if you are not already an assistant) and proof of payment of the court fee (if you do not have legal aid). NOTE that it is not mandatory for the request to be formulated by articles (≠ 412º/1, 77º/2 and 79º/1 and 78º/2) – see. Annex 4.
2.2.6. EFFECTS OF THE ARCHIVEMENT ORDER
CPP'87 opted for a mixed system, accepting the non-preclusive nature of the archiving order by the M.º P.º in any of the archiving hypotheses provided for in art. 277º, but only allowing the reopening of the investigation if new facts or evidence emerge that invalidate the grounds invoked for archiving (for GERMANO MARQUES DA SILVA, «the archiving order... will never have the force of res judicata that makes it definitive... only acquire a force analogous to that of res judicata, which in doctrine is called res judicata "rebus sic stantibus"»). However, the position is not uniform because there are those who defend full archiving in cases covered by art. 277º/1, or with provisional effects in the cases of art. 277º/2, reopening being possible if new facts have emerged that invalidate the grounds of the previous decision. Recently, professor JOSÉ DAMIÃO DA CUNHA spoke out for the granting of consumptive powers and the prohibition of double proceedings or regression to the archiving order in favor of the defendant constituted, under pp. do ne bis in idem.
2.2.7. REOPENING OF THE INQUIRY
Once the period of hierarchical intervention has ended, the reopeningThe opening of the investigation occurs with the emergence of new evidence that invalidates the grounds invoked in the archiving order, however, the reopening must be combined with the rebus sic standibus clause and only covers situations in which the archiving is not definitive , that is, it does not enjoy effects similar to those of the res judicata. CUMULATIVE REQUIREMENTS – presupposes (1st) the existence of new elements of evidence – because when we break the archiving we resume the exercise of criminal action and hostilities against the accused, it includes not only those that have not yet been used in the process (e.g. ., new witnesses, documents or expertise), as well as those already being used have undergone a change in the 3rd TC considers art to be unconstitutional. 291º/1 of the CPP in the part in which the order that rejects, due to futility, the carrying out of evidentiary measures requested by the assistant or accused is considered unappealable. its content (e.g., retraction of a witness, repetition of an expert opinion, new scientific method…), with a special duty to substantiate; and that (2nd) this novum is capable of invalidating the grounds for the archiving order.
3. PRACTICAL ISSUES RELATING TO FILING IN CASE OF DISMISSAL OF A SENTENCE AND THE PROVISIONAL SUSPENSION OF THE PROCESS
3.1. ALTERNATIVE SOLUTIONS TO ACCUSATION
To face the growing procedural inflation, in less serious cases, in the so-called "legal trifles" which, because they are so insignificant, do not deserve to be subject to trial, with beneficial consequences in terms of their resolution – criminal justice will gain speed, procedural deflation and legitimacy. Thus, once the investigation is completed, the M.º P. must, if "sufficient evidence has been collected regarding the commission of a crime and who the perpetrators were", consider alternative (and consensual) solutions to the

accusation and only if inapplicable is which must proceed with the preparation of the latter (hence the talk of a “hierarchy of institutes”: «the Public Prosecutor's Office can only suspend if it cannot archive and can only prosecute if it cannot archive or suspend»).

3.1.1. POSITION OF THE CONSTITUTIONAL COURT (AC. no. 244/99 of 4/29/1999)

The exercise of these powers is not free, but is naturally linked to the rules and general principles of DP and DPP, in particular, the consideration of legal interests protected by the incriminating norm, the gravity (objective and subjective) of the offense and prevention requirements. In relation to the possible compatibility between the attribution of powers (to the M.º P. and judge) not strictly linked to the constitutional principles of criminal legality (32nd CRP) and in the exercise of criminal action (219th, no. 1 CRP), it is admissible if the assumptions and criteria met in the exercise of these powers are legally defined and as long as the margin of freedom attributed does not lead to a lack of predictability of the decision. NOTE NOW in the AC. TC. No. 7/87, Councilor Vital Moreira, in his losing vote, argued that «the MP does not have the right to accuse or not to accuse. It is up to him to carry out criminal action… in accordance with criteria of legality…».

3.2. ARCHIVING IN CASES OF SENTENCE DISMISSAL (ARTICLE 280 OF THE CODE OF CRIMINAL PROCEDURE)

The institute's ratio relates to the existence of certain criminal trifles that, due to their insignificance, do not deserve to be subject to judgment (de minima non curat praetor) because the intervention of formal control bodies already seems to have been sufficient to protect the good violated law and reintegrate the agent into society (40th of the CPP). It is distinguished from conviction in dismissal of the sentence (74th CP) because the latter is a true conviction. The cases covered must be sought in substantive criminal law (see, for example, 143º/3, 148º/2, 250º/4, 372º/2, …, all of the CP) and in separate criminal legislation (punishable by imprisonment not exceeding 6 months, see 9th DL 48/95).

(1) Scope of application – as long as the victim’s interests are taken into account, nothing prevents archiving in the case ofand private, public and semi-public crimes.

(2) Assumptions – a) that the illegality of the act and the guilt of the agent are minimal (in accordance with the principles of subsidiarity, proportionality and guilt) – because, as a rule, it covers crimes punished with a prison sentence of less than 6 months and, to determine the degree of the agent's guilt, this will be minimal if clearly lower than the average (according to the assessment according to the standard of identical cases), knowing that the existence of a high level of damage does not exclude, a priori, the degree diminutive of guilt; b) reparation of the damage – the injured party must be aware of its existence and amount and demonstrate interest in its reparation (= complain), because the State cannot override its will; c) non-opposition of prevention requirements – in principle, the assumption of guilt by the accused (confession) satisfies the requirements of general positive prevention or integration and the other assumptions seem to be sufficient to safeguard the requirements of special prevention; and d) the agreement of the JIC – see. below.

3.2.1. THE AGREEMENT OF THE CRIMINAL INSTRUCTION JUDGE

Without the respective agreement of the JIC, the M.º P. is forced to file an accusation. However, the M.º P., once the evidence collected has been analyzed and the other prerequisites for dismissal of sentence have been gathered, may conclude, by order, that that is the best solution and proceed immediately to archive the case, under the condition that subsequent acceptance by the JIC and, once the respective assent has been received, the M.º P. notifies its order of archiving and agreement or JIC – the most expeditious way of developing the process. NOTE that the JIC must only verify the existence of the legal prerequisites of that archiving decision or, on the other hand, can it also indicate the suitability and appropriateness of the measure, going down to the merits of the decision? For JOÃO CONDE CORREIA, material control is not in line with the principle of accusatory, constitutionally protected (32º, no. 5 CRP), this is because the JIC is not the holder of the criminal action (219th, no. 1 CRP), competing- only (during the investigation phase) the practice of acts related to the DLG, under penalty of usurpation of functions or powers. Because how is it possible for M.º P. to sustain at trial an accusation with which he does not agree and even considers it excessive? ATTENTION, as a rule, the JIC order is simple and tabular, limiting itself to agreeing, by reference to the M.º P. order; however, in case of disagreement, under penalty of illegitimate and arbitrary manifestation of authority, the JIC must justify its decision (205th, no. 1 CRP and 97th, no. 5 CPP).

3.2.2. THE BASIS OF ARCHIVING

Report -> statement of the facts indicated -> factual motivation -> legal classification of the facts and indication of the applicable legal provisions (of law) -> conclusion (made according to the specific case, and not in general and abstract terms) - > notifications and provisions of a bureaucratic nature. NOTE that the presentation of the facts and the indication of the legal provisions applicable in the specific case is fundamental because it establishes the object of the archiving, establishing the objective and subjective scope of ne bis in idem.

3.2.3. METHODS OF REACTION AGAINST THIS ARCHIVED ORDER

If some of its formal and material assumptions are violated: in the case of the M.º P. filing without the JIC's agreement, the assistant may request the opening of instruction or, in other situations, the normal way is the appeal (and then the What is being attacked is the JIC's consent and not the archiving order, which is not subject to appeal).

3.2.4. THE ISSUE OF THE ORDER NOT TO ARCHIVE THE PROCESS IN CASES OF SENTENCE EXEMPTION

The M.º P. cannot use this mechanism in a sporadic and arbitrary way, replacing the duty to accuse with the duty to archive under the

terms of art. 280th CPP has procedural consequences: its violation allows the defendant to request the opening of an investigation based on the allegation of non-compliance with this duty, just as theassistant who, in addition, can also trigger hierarchical intervention (AC. TC. no. 397/2004). On the other hand, when the JIC does not give its consent to the archiving of the files, the M.º P. must appeal that judicial decision (of disagreement) that does not accompany its own (17th Law no. 51/2007 of 31/8).

3.2.5. EFFECTS OF FILING IN CASES OF SENTENCE DISMISSAL

It has a force similar to that of res judicata and the investigation can never be reopened and that decision cannot be replaced by another, capable of subjecting the accused to trial, even if new facts arise that are likely to change its assumptions because of the legal peace of the accused (ne bis in idem) cannot be prejudiced by the deficiencies of an official investigation. And the analogical application of art. 449th, no. 1 of the CPP? If the defendant (illegitimately) consented to an unfair dismissal, he does not deserve the protection of res judicata.

3.3. PROVISIONAL SUSPENSION OF THE PROCESS (ARTICLE 281 OF THE CRIMINAL PROCEDURE CODE)

(1) Requirements – sufficient evidence of the commission of a crime punishable by a prison sentence of no more than 5 years; request (whether unofficial or not) from M.º P.; JIC agreement; imposition and predictability of compliance by the defendant with injunctions and rules of conduct; agreement of the defendant and assistant; absence of previous conviction (criminal record) for a crime of the same nature (that is, relating to the same legal interest, without prejudice to the right to resocialization); absence of previous application of provisional suspension of proceedings for a crime of the same nature (except for temporal and material limits); non-application of hospitalization security measures; absence of a high degree of guilt (that is, higher than the average guilt for that type of crime). NOTE that there are special regimes that facilitate the provisional application of the process (281º, nº 6 and 7 CPP and 56º DL 15/93 of 22/1).

(2) Application in the case of concurrent crimes - despite the law being silent, nothing seems to prevent suspension if the maximum formal limit is respected, that is, as long as the abstractly applicable penalty does not exceed 5 years in prison (see AC. 02/16/2005).

(3) Consent of the accused – must be free and informed (126th CPP), complete and without reservations, and must be given in the presence of the defender when the law requires it (64th CPP) and must be unequivocally included in the records. NOTE consent must be informed, that is, it must be clarified regarding the weighing of the advantages and disadvantages linked to the alternatives in question (AC. TC. no. 67/2005, of 24/01/2006).

(4) Consent of the assistant – portrayed in the records, and the victim/offended party must also be given the floor if an assistant is not appointed, without prejudice to the request for the opening of an investigation (72º, no. 1, paragraph b) and 287º , no. 1, al. bCPP).

(5) Advantages – not only is the defendant not subjected to the embarrassment of a trial hearing, but also the respective facts are not recorded in the criminal record; while the assistant is certainly guaranteed the compensation due (because in common proceedings there are ways to prevent it), with that compensation being made as quickly as possible; Lastly, and in addition and for both parties, it is necessary to aim for a peaceful and rapid resolution of the conflict and, from an economic point of view, there are no costs to the process.

3.3.1. PROCESSING

In the common process, the investigation phase ends, but even before the first judicial interrogation, the respective defenders must request, when the M.º P. has not requested it ex officio, someone to make the mechanism work and request the JIC's agreement; in summary or abbreviated proceedings, if the M.º P. does not request it at the beginning of the respective trial hearing, the defenders must raise the request to the trial judge himself, indicating, from the outset, the desired injunctions. NOTE if the M.º P. outright rejects the application of art. 281st CPP, during the investigation phase, the defendant's defender must request the openingture of instruction, requesting the respective application to the JIC, but, since the agreement of the M.º P. is essential, how will it be viable to activate art. 281st CPP, when that one already, during the investigation phase, disagreed? Unless the decision is not well-founded, it seems that the M.º P. will not accept the provisional suspension of the process again.

3.3.2. INJUNCTIONS AND RULES OF CONDUCT (281º, no. 2 CPP)

vd. the exhaustive list, knowing that they must be appropriate to the specific case.

3.3.3. THE AGREEMENT OF THE CRIMINAL INSTRUCTION JUDGE

Initially dispensable, today the JIC can only control the conditions of suspension, and is not responsible for carrying out criminal action, imposing more severe injunctions than those proposed by the M.º P. For the TEACHER, the JIC's position is that of a “judge of freedoms”, therefore, the argument is inadmissible, under penalty of disproportionately violating the rights of the accused, according to which the JIC disagrees as it understands that, in the specific case, the injunction measures or rules of conduct are not sufficient. The JIC must only determine the validity and regularity of the act, the free and informed consent of the accused and assistant and that the requested injunctions do not jeopardize the rights, freedoms and guarantees of the accused (e.g., those that oblige the driver caught under the influence of alcohol, circulating in the village where he lives with a sign saying: “I am an alcoholic”), otherwise, when carrying out criminal action, he exaggerates his duties (see AC. STJ 16/2009).

3.3.4. THE GROUNDS FOR THE PROVISIONAL SUSPENSION OF THE PROCESS

Prior report -> indication of the facts, with a detailed description of the objective and subjective elements of the legal type of crime

(establishing the object of the process and the limits of the res judicata) -> the law: examination of the reasons that justify the suspension, including applicable injunctions and rules of conduct and respective grounds -> conclusion -> notifications and other provisions of a bureaucratic nature.

3.3.5. METHODS OF REACTION AGAINST SUSPENSION

If issued in legal terms, it is not subject to appeal, but if its assumptions are violated, namely, if the assistant's opinion is not considered or in the absence of JIC's agreement, the order must be challenged through a request for the opening of an investigation. .

3.3.6. THE INFLUENCE OF THE ORDER THAT DID NOT SUSPEND THE PROCESS

If the M.º P. accuses when he should suspend, the accused can request the opening of an investigation and, together with the assistant, can appeal against the JIC's decision of disagreement when it is necessary to agree.

3.3.7. EFFECTS OF THE PROVISIONAL SUSPENSION OF THE PROCESS

It precludes the possibility of further assessment of the same object (282, no. 3 CPP), because it is considered that the “principle of ne bis in idem… also applies to procedures for extinguishing criminal proceedings,… by which the Public Prosecutor's Office of a State archives, without the intervention of a judicial body, the criminal procedure initiated... after the accused has satisfied certain obligations and, in particular, has paid a certain sum of money fixed by the Public Prosecutor's Office" (see AC. CJEU of 11/02 /2003). On the contrary, if the defendant does not comply with the imposed injunctions and rules of conduct, the process continues and the services may be repeated (282º, no. 4 CPP). But what if the non-compliance is partial? Which entity is competent to sanction non-compliance? Can imposed injunctions be changed? From the outset, the assistant can request the opening of an investigation to determine whether or not the imposed injunctions were complied with (see AC. RC of 21/01/2004). On the other hand, and in the absence of a legal solution, the provisions of art. 55th of the Penal Code? The biggest obstacle to such an interpretation lies in the fact that the TC declared unconstitutional the original wording of article 281, no. 4 CPP, which allowed the modification of injunctions and rules of conduct (see AC. TC. no. 7/87). In any case, the application of the regime appears to be defensible and preferable to the repealtion of the suspension and the consequent indictment.

3.4. CRIMINAL MEDIATION (Law no. 21/2007 of 12 June)

When effectively implemented, it will be a third alternative solution to the indictment. Currently, it has a limited scope because it is not yet applied throughout the country, in addition to the fact that the possibilities for its application are relatively scarce.

4. PRACTICAL ISSUES RELATING TO THE INDIVIDUAL PROSECUTION

4.1. THE PUBLIC INDIVIDUAL PROSECUTION

(1) Three functions – procedural promotion, essential in accusatory processes (32nd, no. 5 CRP), because it is this that introduces the fact to court (without an indictment, the judge cannot officially acknowledge and judge the facts imputed to the defendant) and the lack of which constitutes an incurable nullity (119th, subparagraph b) CPP); informative, because it is through it that the defendant learns which facts are specifically imputed to him, enabling him to prepare his defence and exercise his right to adversarial proceedings (32, no. 5 and 6 ECHR); and delimitative, because the subject matter of the proceedings is, in principle, fixed, since the possibilities for change are limited (303, 309, 358 and 359 CPP) and the trial hearing (339, no. 4 CPP) and the res judicata are limited to that subject matter.

(2) Importance of bringing charges – it is up to the Public Prosecutor, in the exercise of criminal proceedings, to bring charges that must comply with the mandatory rules of art. 283, no. 3 CPP, under penalty of nullity. Therefore, a poorly drawn up accusation may irreparably compromise the treatment that substantive law prescribes for a given conduct, especially since only the facts contained in the accusation and the indictment can be taken into account (see AC. TC. No. 173/1992, which states that “the principle of accusation and defence implies that the matter cannot be presented in court for trial without its subject matter having been previously limited in a document (the accusation) indicating the facts of which the defendant is accused and the criminal law framework”).

(3) General requirements – first, it must be reduced to writing and the “narration of the facts… must be sufficiently clear and comprehensible… so that the defendant can know precisely what he is accused of… and so that the subject matter of the proceedings is clearly defined and established” (see AC. TC. No. 173/1992). However, it is possible for the Court to consider as proven a certain fact not expressly mentioned in the indictment, but for the proof of which, in that procedural document, a document existing in the proceedings is expressly invoked (see AC. TC. No. 674/99 and 355/2000 + interpretation of article 283, no. 3, subparagraph b) of the Portuguese Criminal Procedure Code in accordance with article 379, subparagraph b) and articles 358 and 359 of the Portuguese Criminal Procedure Code), provided that the documents to which reference is made are notified with the indictment (also because see article 228, no. 3 of the Portuguese Criminal Procedure Code). However, in the case of a summary trial, the presentation of the accusation may be replaced by the reading of the report (389, no. 2 of the Criminal Procedure Code), while in the abbreviated trial the identification of the defendant and the narration of the facts may be carried out by reference to the report or indictment (391-B, no. 1 of the Criminal Procedure Code) – the less formalistic solution is due to the minor nature of the facts, the existence of simple and evident evidence and the need for a swift resolution.

(4) Specific requirements – the accusation must have the elements provided for in art. 283, no. 3, under penalty of nullity. NOTE: In the

past, nullities were considered remediable; however, because this regime was difficult to reconcile with the importance of the accusation and the seriousness of some of them, the legislator created an intermediate regime according to which the judge must take official notice of the aforementioned defects under the terms of art. 311, No. 3 of the Criminal Procedure Code, and no invitation to improve the invalid procedural document is foreseen (see AC. RL of 10/10/2002).

4.1.1. BASIS FOR THE ACCUSATION IN COMMON PROCEEDINGS – see Annex No. 5

Introduction – "The Public Prosecutor's Office hereby brings charges, pursuant to Article 283 of the Criminal Procedure Code, requesting that the case be tried in common proceedings by a separate court.angular, against…". ATTENTION: the identification of the court to which the act is addressed (individual, collective or jury) must be determined in accordance with the rules for establishing jurisdiction provided for in articles 13, 14 and 16 of the CPP, without prejudice to the special power granted to the M.º P. by art. 14th, no. 2, al. b) of the CPP, which admits the application in a single court in the case in which the maximum measure of the abstractly applicable sentence is greater than five years in prison, even if in the context of crimes, when the M.º P.º deems it possible, in the indictment , which should not specifically impose a prison sentence of more than 5 years.

Identification of the accused – all elements relating to the civil identification of the accused are included here, especially since see. 141st, no. 3 and 342nd CPP.

Logical and chronological narration of the facts that make up the legal type of crime attributed to the defendant and that support the application of a penalty or security measure – of the objective and subjective elements of the crime (especially, indicating intent and awareness of the illegality), under penalty of it not being able to be received (311º, no. 3, al. d) CPP). Furthermore, the narrative should include, whenever possible, the place, time, motivation for committing the acts, the degree of participation and any circumstances relevant to determining the sanction that should be applied (e.g., aggravating or mitigating facts).). The writing must be understandable by anyone, regardless of their level of culture, and must be done in an exhaustive, rigorous and concise manner. Conclusive and qualifying concepts, as well as value judgments and technical-legal concepts, cannot be used. Due to the principles of indivisibility and consumption, the subject of the process will not be only what appears in the object of the indictment order, but everything that, in addition to the factualism versed in that order, should be included there, but is not (MARQUES FERREIRA, JOSÉ SOUTO DE MOURA, CASTANHEIRA NEVES). The facts justifying the application of other additional penalties and those associated with recidivism must also be exposed (75th CP). Geographical and temporal coordinates are relevant because, while the place is the determining criterion for the court's territorial jurisdiction, the passage of time can influence the punishment (e.g., prescription, 118th CP) or the measure of the penalty .

Indication of the applicable legal provisions – always starting from the least serious forms of accusation to the most serious: "The defendant committed the crime of…, provided for and punished in article… of the Penal Code", because the iura novit curia principle is now outdated. The precise legal-criminal framework is essential so that the accused can fully exercise his defense (see AC. TC. no. 336/2006 of 18/05/2006). The court cannot even convict for crimes other than those stipulated in the indictment or pronouncement, without granting the defendant the necessary time to prepare his defense (358º, no. 3 CPP), the attribution to the defendant of any advantage with the error of legal qualification made in the pronouncement order or equivalent. As a rule, if there is sufficient evidence, one must be charged with the most serious crime, arguing that one can always switch to the less serious type. Sometimes it may be necessary to invoke other elements relating to the issue of culpability (negligence, intent, authorship, complicity, attempt) and the issue of determining the sanction (recidivism, additional penalties).

Evidence (283º, no. 3, als. d), e) and f) CPP) – under penalty of the accusation being doomed to failure, functioning as a kind of support for the accusation, also serving the rights of defense (e.g. ., if the indicated evidence is prohibited, the defendant may immediately invoke the respective defect – see 32º, no. 8 CRP and 126º CPP; The indication of evidence will begin with the list of witnesses (283º, no. 3, al. d) and 7, 215º, no. 2 and 128º, no. 2 CPP), who must be duly identified.registered to determine their credibility (see Law 91/99 of 14/07), and may indicate people prevented from testifying as witnesses (133rd CPP: the defendant, co-accused, assistant, civil parties and experts). PLEASE NOTE that a mere cross-reference (e.g., "the one in the case file") is not enough.

Date and signature – its omission does not prevent the accusation from fulfilling its respective purposes if it can be established through other irrefutable elements, as long as due procedural deadlines are respected.

Coercive measures applied – stating the measure that should be considered to be applied or maintained in the trial phase (see 213º, no. 1, al. b) CPP), but there is no legal justification for this.

Appointment of a defender (64th, no. 3 and 4 CPP) – when the accused does not have a previously appointed representative, because only in this way will the accused be able to exercise his constitutionally enshrined and procedurally implemented rights of defense (62nd-67th CPP). PLEASE NOTE that appointment is not binding, the defendant can appoint a lawyer at any time during the process. In cases where the appointment is not mandatory, the accused may freely decide to defend themselves, under penalty of violating their personality rights.

Notifications and other provisions of a bureaucratic nature (283º, no. 5 CPP) - for the TEACHER, the unquestionable obligation to notify

the accusation (under the terms of art. 283º, no. 5 CPP) cannot be confused with the need or not to order this notification in the text of the indictment. PLEASE NOTE that the lack of notification of the accusation to the accused makes it impossible for him to exercise his right of defense.

4.1.2. CONSEQUENCES OF VIOLATION OF ARTICLE 283, No. 3 CPP

It is a cause for nullity, so the trial judge can reject/refuse to receive the indictment (311th CPP), however, this nullity has a hybrid regime insofar as, and contrary to the provisions of art. 120, no. 3 CPP, which provides for the accusation of the defect within a maximum period of 5 days from the order that closes the investigation (under penalty of correction), the respective ex officio knowledge is permitted.

4.1.3. DEADLINE FOR DEDUCTION OF THE ACCUSATION

The law does not establish any legal period during which the M.º P. Magistrate must issue the respective order of indictment, which is why the supplementary period of 10 days applies (105º, no. 1 CPP), with the exception of the summary process whose order must be issued immediately. However, the exercise of ius puniendi does not expire when that period is largely exceeded, which has a merely regulatory nature, not determining the extinction of the practice of the procedural act, but being likely to generate disciplinary liability (GERMANO MARQUES DA SILVA).

4.1.4. COMPLIANCE WITH ARTICLE 285 OF THE CODE OF CRIMINAL PROCEDURE

In the case of public or semi-public and private crimes, the M.º P. must notify the assistant so that, if he wishes, he can file a private accusation regarding the private crimes (see AC. STJ no. 1/2000, which he considers as irremediable nullity (al. b) of the 119th CPP) the subsequent adherence of the M.º P. to the accusation brought by the assistant relating to crimes of a public or semi-public nature). However, once the investigation is over, the M.º P. must immediately accuse or archive existing public and semi-public crimes (clean up the process) and only then comply with the provisions of art. 285th CPP (see 284th and 311th, no. 2, al. b CPP). However, it is certain that in the abbreviated process the accusation of M.º P. takes place after a private accusation has been filed (391º-B, no. 3 and 285º CPP). Regarding the problem of duplication of notifications (of the M.º P.'s order and the assistant's order), this is resolved by suspending the defendant's notification, which only occurs after the assistant's pronouncement. NOTE in the case of a plurality of assistants, represented by different lawyers (70th, no. 2 CPP), we may have as many private accusations as there are incompatible interests in question.

4.2. THE PRIVATE ACCUSATIONS

4.2.1. THE ACCUSATION BY THE ASSISTANT (284th CPP)

Public accusation followslica and it is a limited faculty, attributed to the assistant, without prejudice to the request for opening instruction (287º, no. 1, al. b) CPP). NOTE: the assistant cannot accuse for facts that result in a substantial change in the object of the process (311º, no. 2, al. b) and 1º, no. 1, al. f) CPP), that is, which have the effect of imputing a different crime or aggravating the maximum limits of sanctions applicable in the accusation handed down by the M.º P., because, in these cases, it has been understood that there can only be to a request to open an investigation, which presupposes not only archiving but also non-indictment.

(a) Formalism – the accusation under article 284 CPP, as a general rule, is limited to referring to the accusation of the M.º P., subscribing to it in full. NOTE that the case in which the private accusation refers to the criminal complaint presented will be different, because, and due to the violation of the principle of self-sufficiency of the accusation, it is not allowed, being the cause of a mere irregularity.

4.2.2. THE PRIVATE ACCUSATION (285th CPP)

This is the most important power attributed to the assistant when the criminal procedure concerns private crimes: thus, at the end of the investigation, the M.º P. will notify the assistant so that, if he wishes, he can file a private accusation within a period of 10 days (285º , no. 1 CPP) and thereby rectify the process in order to submit it to trial or not, in case there is sufficient evidence to apply a penalty or security measure, whose gauge of assessment of this sufficiency is the same as that of the M.º P., that is, that of art. 283º, no. 2 CPP. PLEASE NOTE, however, that there may be divergences, because the M.º P. or the assistant are misreading the evidence collected or have different legal concepts. The accusation will have to reflect the facts discovered during the investigation (see 89th CPP) and, therefore, once sufficient evidence has not been collected, the assistant must not accuse, but if the M.º P. has not carried out all the useful and possible steps, and knowing of new unexplored evidence, you should avoid archiving the files, and suggest their collection. If there is sufficient evidence and the assistant refuses to accuse, he must be ordered to pay costs, for unjustified abstention from accusing (515º, no. 1, al. D) CPP). But, if the evidence collected is insufficient and the assistant does not speak out, is the reason for his abstention a consequence of that insufficiency (justified abstention) or because he intends, with that omission, to put an end to the process (unjustified abstention)? The collaboration between the procedural subjects, the assigned powers-duties and the need to avoid hasty and unfounded judgments, advise the assistant to speak out, supporting his position and fulfilling his procedural duties – see. Annex 6.

4.2.2.1. Formalism

The private accusation, under penalty of nullity (and thereby precluding the defendant's conviction), must comply with the provisions of

art. 283º, no. 3 and 7 CPP, and must contain information leading to the identification of the accused, the facts that support the application of a sentence or security measure, the applicable legal provisions and the date and signature. Furthermore, you will have to direct the act, identifying its nature, the process in question and who it is addressed to, under penalty of mere irregularity (AC. RL of 29/9/1998). NOTE if the judge refuses to receive the accusation because he understands that it is null (311º, no. 2, al. a) and no. 3, al. a), b) and c) CPP), can the assistant file a new accusation after the peremptory period for committing it has expired? No, it is detrimental to the renewal of null acts (122º, no. 2 CPP), especially if the renewal can benefit anyone who is not responsible for the error committed (AC. TC 25/10/2006, according to which it is not unconstitutional that interpretation, namely, when it prevents the renewal of the request to open the assistant's investigation and declared null).

(1st) Identification of the competent Court – "Exm.º Mr. Judge of the Criminal Courts of …", that is, the place wherethe crime occurred (e.g., in Porto, we have the collective court, for the trial of crimes punishable by a prison sentence of more than 5 years (14th CPP), the small criminal courts, for the trial of special cases, and the single court). NOTE: if there is a public accusation, the private accusation must be directed to the same court to which it was sent, and the M.º P. may, a posteriori, via art. 16th, no. 3 CPP, refer to the single court.

4.2.3. THE CIVIL COMPENSATION REQUEST

By virtue of the principle of adhesion (71st CPP), the assistant must formulate, at the time of filing the accusation, his request for civil compensation (77th, no. 1 CPP), knowing that the M.º P. himself may also having to formulate it at the time of the accusation (76th, no. 3 and 77th, no. 1 CPP). Injured parties are allowed this possibility in the cases of art. 77th, no. 2 and 3 CPP. As a rule, except for the cases provided for by law (77th, no. 4 CPP), the request is articulated and filed with the accusation, within the period in which it must be formulated and must be accompanied by duplicates for the defendants and the secretariat . In cases of special complexity, only the extension of the objection period, provided for in art. 78th of the CPP (107th, no. 6 CPP).

(a) Formalities – the formal requirements foreseen for the preparation of an initial petition in civil proceedings: except in the cases of art. 77th, no. 4 CPP, must contain all the assumptions of civil liability, describing the facts constituting the obligation to compensate, and may refer to the text of the accusation. Damages must be exhaustively listed, starting with pecuniary damages (consequential damages and loss of profit) and ending with non-pecuniary damages – see. Annex 7.

4.2.4. OVERALL CONSIDERATION OF THE ASSISTANT'S CONDUCT

The. Follows the public accusation (284th CPP);

B. Follows the public accusation and makes a request for civil compensation (284th and 71st and 77th, no. 1 CPP);

w. Files private accusation (285th CPP);

d. Files private accusation and request for civil compensation (285th and 71st and 77th, no. 1 CPP);

It is. Follows the public accusation and deduces private accusation (284th and 285th CPP);

f. Follows the public accusation, makes a private accusation and makes a request for civil compensation in relation to one or both accusations (284th, 285th and 71st and 77th, no. 1 CPP);

g. It is limited to making a civil compensation claim (it is not necessary to become an assistant).

4.3. THE INFECTION OF THE ORDER OF ACCUSATION

By the assistant, in relation to public and semi-public crimes when he considers that the M.º P. did not take the accusation as far as possible (express or implicit archiving) and intends to extend the object of the process to unexplored areas; or by the assistant, who here has the first possibility for an effective defense, demonstrating his innocence before the JIC and avoiding the burden of the subsequent trial, however, the instruction is a preliminary phase that does not offer the guarantees of a final decision, until because every defendant is presumed innocent until the sentence of conviction becomes final (32, no. 2 CRP), and there is no citizen's right not to be subjected to trial. On the other hand, unlike the assistant who, in addition to the RAI, can also challenge the archiving raising possible nullities and hierarchical intervention, the accused only has the option of opening an investigation and arguing the nullities of the accusation itself.

4.3.1. THE REQUEST TO OPENING INSTRUCTION BY THE ASSISTANT

If the M. P. accuses but the assistant, unsatisfied, intends to subject the accused to trial for other facts capable of forming a substantial change to those, he must request the opening of an investigation (because if the change is not substantial then he will have to accuse, see 284th CPP). For example, in the model case, if the M.º P. accuses the crime of harming physical integrity through negligence, the assistant can request the opening of an investigation challenging the sentence for committing the crime of homicidein attempted form. PLEASE NOTE that more than a reaction against an insufficient accusation is the challenge of an implicit filing.

4.3.2. THE REQUEST TO OPENING INSTRUCTION BY THE ACCUSED

It is the normal way for the accused to challenge an indictment order. Once notified of this, he can request its judicial confirmation, preventing an unfair trial. If no charges have been brought (e.g., dismissal for amnesty), it is no longer permitted to request an investigation on the basis of a "judicial declaration of innocence".

(a) Deadline – is 20 days from notification of the opening of instruction. However, if there are several defendants, and the notification is

made on different days, then the act can be carried out by all or each of them, until the end of the period that starts to run last (287º, no. 1 and 6 and 113º, no. 12 CPP). If notification of one of the defendants is not achieved, the deadline begins to run for the other co-accused notified after the communication made by the M.º P. that that case will proceed to trial, in accordance with art. 283º, no. 5 CPP (see AC: RP of 10/23/2002). On the other hand, when the procedure reveals particular complexity, in accordance with the provisions of article 215.º no. 3, in fine, of the Criminal Procedure Code, the judge may, at the defendant's request, extend this period up to a maximum limit of 30 days (see article 107, no. 6 of the Code of Criminal Procedure), a possibility that, in itself, prevents the admissibility of transposing the civil nature of delay into criminal proceedings. PLEASE NOTE that the “precautionary jurisprudence” and due to the duty of prudent patronage advises that the request for extension of the deadline be presented and decided before the end of the period in art. 287º, no. 1 CPP, this is because, if the extension is rejected, you still have that initial period left. Furthermore, regarding the practice of the act in the first three working days following the end of the period (107º-A CPP), the respective amounts must be immediately settled, under penalty of payment of a fine (145º, no. 6 CPP).

(b) Formalities – introduction the indication of the reasons, in fact and in law, for the defendant's disagreement with the accusation made against him and which demonstrate the error in the M.º P's actions. the request: the order of non-indictment the proof.

(c) Reasons for rejecting the application – due to being untimely, due to the incompetence of the judge to whom it is addressed or due to the legal inadmissibility of the instruction (287º, no. 3 CPP) – see. Annex 8.

4.3.3. DECLARATION OF NULLITY OF THE ACCUSATION

Unlike the declaration of nullity of the archiving order, which is a means of attacking its assumptions (see 58th, no. 4, 64th and 120th, no. 1, al. d) or 119th, al. f) all from the CPP), in alleging defects in the accusation itself, the applicant does not limit himself to contesting the grounds of the order, but directly attacks its intrinsic value, because the act does not satisfy the underlying informative and delimitative requirements. PLEASE NOTE does not mean the definitive archiving of the process in view of the possibility of renewing invalid acts, if the general deadline for their practice has not yet elapsed. It has similar effects to a dilatory exception in civil proceedings (493º, no. 2 and 494º CPC).

(a) Formalities – simply point out the procedural error committed.

(b) Legitimacy for its assessment –

although the M.º P. can repair it ex officio, it is up to the investigating judge, until the end of the investigation, or the trial judge, to judge its occurrence (311º, no. 2, al. a) and 3 CPP) – see. Annex 9.

5. PRACTICAL ISSUES RELATING TO PROCEDURAL DEADLINES.

5.1. IMPORTANCE

Deadlines must be observed, under penalty of precluding the exercise of the right.

5.2. REGULATORY DEADLINE COUNTING MECHANISMS

(a) Rules of the Civil Code (279th and 296th CC) – from the outset, the period starts counting on the day following the day from which the period begins to run (e.g., notification is given on the day 11/19/2010. The deadline of 20 daysfor the opening of instruction (287º/1) it starts to run on 11/20/2010), however, if the deadline ends on a Sunday or holiday, the count is transferred to the next business day (e.g., if the deadline ends on 11/21/2010, a Sunday, by virtue of that legal provision, the deadline ends on the next business day, therefore, 11/21/2010).

(b) Rules of Civil Procedure – judicial deadlines do not run during judicial holidays (144º, no. 2 CPC + LOFTJ's) and, in relation to the problems of bridge tolerance (e.g., in the past, in jurisprudence it was discussed the comparison given in relation to Carnival Tuesday), by virtue of the provisions of article 144, no. 3 CPC, the courts are considered closed on those days and therefore the deadline is transferred to the following business day (for example, we are notified to file a private accusation (285th, no. 1) on 11/19/2010. The deadline starts on 11/20/2010. running, it would end on 11/29/2010. Likewise, the period would end on that date if the notification was made on 11/17 and 18/2010, because the term would occur on a weekend. , which is transferred to the next business day).

5.3. NOTIFICATIONS AND CITATIONS (112th and ss. CPP)

In accordance with the provisions of art. 113th CPP, the respective period starts from the moment of notification and, depending on whether it is made by registered post or by simple post, the notification is respectively presumed to have been made on the 3rd business day following that of sending of the letter (113th, no. 2 CPP) or on the 5th day after (regardless of whether it is a business day or not) the date indicated in the drawn up declaration (113th, no. 3 CPP). EXAMPLES – if notification is made by registered post on 19/11/2010, it is presumed to be made on 24/11/2010, that is, on the 5th day thereafter (113th/3). Imagine that the letter was deposited on 11/16/2010. Pursuant to art. 113º/3, the notification is considered to have been made on 11/22/2010, from which the period begins, but begins to run on the following day. However, if the deposit was made on 15/11/2010, the notification is presumed to be made on 21/11/2010 (it is not transferred to the next business day, because this rule is reserved for the end and not the beginning of the deadline) and we would have until 11/30/2010 the possibility of bringing a private accusation (285º/1).

5.4. EXTENSION OF DEADLINES

5.4.1. BY EXTENSION

Based on its “special complexity” and under the provisions of article 107, no. 6 of the Code of Criminal Procedure, certain deadlines referred to therein (e.g., for opening an investigation or contesting the civil compensation claim) allow an extension of the initial deadlines up to a maximum period of 30 days. PLEASE NOTE that, according to the aforementioned article, only the extension of the legal deadline for contesting the civil compensation claim provided for in article 78 CPP is permitted, but not the deadline for deducting the civil compensation claim, as well as the private accusation. The figure excludes the delay of civil proceedings.

5.4.2. FOR THE EXTEMPORARY PERFORMANCE OF ACTS (107º-A CPP and paragraphs 5 to 7 of article 145º CPC)

The acts can also be carried out within the following three working days, upon payment of the fine due.

5.4.3. ON THE BASIS OF JUST IMPEDIMENT (see paragraphs 2 to 5 of article 107 of the Code of Criminal Procedure)

Finally, the practice of procedural acts outside the legally admissible period is permitted, if the “just impediment” is demonstrated and proven, but provided they are duly authorized by a judicial order from the investigating judge to that effect.

5.5. SIMULTANEOUS NOTIFICATION OF THE ACCUSED AND HIS DEFENDER (113º, no. 9 CPP)

Given that we have two notification deadlines running, whenever the defender is notified at a different time than his client, then the deadline that ends last is the one that starts the count, even though the respective act can be carried out earlier.

5.6. NOTIFICATION IN CASE OF PLURALITY OF ASSISTANTS OR DEFENDANTS (113º, no. 12 CPP)

Or forThe time limit for carrying out the procedural act is counted from the notification that was made last, so that it can be carried out until the end of the period that began to run last (e.g., A is notified, by simple post, on 16/11/2010; likewise, B is notified, but without effect, because unknown in uncertain part. When does A's period to request the opening of the investigation begin, by virtue of the application of art. 113/12 to the case? This situation is pending before the STJ, knowing that, in the opinion of the professor, the Public Prosecutor, must in these situations refer the case for trial and notify defendant A that, given the impossibility of notifying defendant B, from that moment onwards he will refer the case for distribution, so that the respective period of art. 287/1-a begins to run from this last notification made. The STJ has not yet given a standardizing response.