CODE OF CRIMINAL PROCEDURE
- PORTUGAL -

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(Law No 27/2015 of 14/04/2015)
(Organic Law No 2/2014 of 06/08/2014)
(Rectification no. 21/2013 of 19/04/2013)
(Law no. 20/2013 of 21/02/2013)
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(Law no. 48/2007 of 29/08/2007)
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(DL no. 212/89 of 30/06/1989)
(DL no. 387-E/87 of 29/12/1987)
(Declaration of 31/03/1987)

VERSION IN FORCE IN JULY 2015

(EXCERPTS)

PART I

BOOK I
SUBJECTS IN PROCEEDINGS
(...)

TITLE III
THE DEFENDANT AND HIS DEFENCE COUNSEL

Article 57
The status of defendant (arguido)

1 – Any person formally charged or against whom the beginning of the examining stage (instrução) has been requested in the scope of criminal proceedings shall acquire the status of defendant.

2 – The defendant's status shall remain valid during all stages of proceedings.

3 – The provisions of Article 58, paragraphs 2 to 6, shall apply accordingly.

[Wording of Law 59/98]

Article 58
Acquiring the status of defendant

1 – Subject to the provisions of Article 57, the formal acquisition of the status of defendant is mandatory as soon as:

a) A person makes statements before any judicial authority or criminal police body during an inquiry started against him, where there are grounds to suspect that such person has committed a criminal offence;

b) A coercive or patrimonial guarantee measure must be imposed on a specific person;

c) A suspect is arrested under the terms and for the purposes of Articles 254 to 261 of this Code; or

d) A police report has been drawn up identifying a person as an alleged offender and such person has been informed on the contents thereof, unless the report is clearly ungrounded.

2 – The status of defendant is acquired by the communication to the concerned person, either orally or in writing, by a judicial authority or criminal police body that, as of that moment, he has the status of defendant in criminal proceedings and, if necessary, by the explanation of procedural rights and duties of defendants laid down in Article 61, which he, therefore, is bound to observe.

3 – The status of defendant following communication by a criminal police body is reported to the judicial authority within 10 days. The judicial authority shall have a 10-day period for examination and validation or non-validation of the act.

4 – The status of defendant implies the handing over to the concerned person, if possible simultaneously, of a document specifying the particulars of the case and those of his defence counsel, should the latter have been appointed. The document must also indicate the defendant's procedural rights and duties as listed in Article 61.

5 – Failure to comply with, or breach of, the formalities laid down in the preceding paragraphs shall prevent the use as evidence of any statements made by the concerned person.

6 – The non-validation of the status of defendant by the judicial authority does not affect evidence previously collected.

[*Wording of Law 48/2007*]

Article 59
Other cases entailing the acquisition of the status of defendant

1 – Should, in the course of an interview to a person other than a defendant, grounded suspicions that such a person committed a criminal offence be raised, the authority conducting such interview shall immediately suspend it and proceed to the communication and to the advice referred to in Article 58(2).

2 – The person suspected of having committed a criminal offence has the right to be acquire the status of defendant, at his/her own request, whenever investigations conducted for purposes of confirming such suspicions personally affect him/her.

3 – The provisions of article 58(3)(4) shall apply accordingly.

[*Wording of Law 59/98*]

Article 60
Procedural status

From the moment when a person acquires the status of defendant, he is ensured the exercise of procedural rights and duties, without prejudice to the enforcement of coercive and patrimonial guarantee measures or to the implementation of evidence formalities, as provided for by law.

Article 61
Procedural rights and duties

1 – Unless otherwise provided for by law, a defendant has, at all stages of proceedings, the right to:

a) Attend all procedural acts that directly affect him;

b) Be heard by the court or by the examining judge whenever they render a decision that personally affects him;

c) Be informed on charges against him prior to making any statements before an authority;

d) Refuse answering any questions addressed by an authority on charges against him and on the substance of his statements on them;

e) Choose a lawyer or ask the court to appoint him a defence counsel;

f) Be assisted by a defence counsel in all procedural acts where he takes part and, when detained, to contact such counsel in privacy;

g) Take part in the inquiry and examination, propose evidence and require any necessary measures;

h) Be informed on his rights by the judicial authority or criminal police body before which he must appear;

i) Appeal, under the law, against any decisions to his detriment.

2 – Communication in privacy as referred to in subparagraph f) above shall occur in a visible manner whenever required for security reasons, but may not be overheard by the watching agent.

3 – A defendant has especially the duty to:

a) Appear before the judge, prosecutor or criminal police body whenever required by law and after being summoned;

b) Answer truthfully to questions addressed by the competent authority on his identity;

c) Fill in the form Termo de Identidade e Residência (Statement of Identity and Residence) as soon as he acquires the status of defendant;

d) Submit to evidence formalities and to coercive and patrimonial guarantee measures, as specified by law and as ordered and implemented by a competent authority.

[*Wording of Law 20/2013*]

Article 62
Defence counsel

1 – Defendants may choose a lawyer at any stage of proceedings.

2 – If a defendant has more than one chosen lawyer, service of process will be made in relation to the lawyer having been chosen in the first place during the formal declaration as defendant.

[*Wording of Law 48/2007*]

Article 63
Rights of defence counsels

1 – The defence counsel exercises the rights recognised by law to defendants, except for those personally granted to the accused.

2 – A defendant may render without effect any acts performed on his behalf by the defence counsel, as long as he does it by an explicit statement before a decision on that act is taken.

Article 64
Compulsory assistance

1 – The assistance by a defence counsel is compulsory:

a) During the interrogation of an arrested or detained defendant;

b) During interrogation by a judicial authority;

c) During the preliminary hearing and court hearings;

d) In any procedural acts other than the formal declaration as defendant, whenever the accused person has any visual, hearing or speaking impairment or is illiterate, can not speak or understand the Portuguese language, is less than 21 years old, or where the issue of his excluded or diminished criminal liability has been raised;

e) In case of ordinary or extraordinary appeal;

f) In cases provided for by Articles 271 and 294;

g) Where the trial hearings take place in absence of the defendant;

h) In other cases determined by law.

2 – Besides cases referred to above, the court may appoint a defence counsel for a defendant, at the court's or defendant's request, where the specific circumstances of the case show the need or the convenience for the defendant to be assisted.

3 – Subject to the provisions of paragraphs above, if the defendant does not have a lawyer or an appointed defence counsel, the appointment of a counsel is compulsory as of the moment when the person is formally charged. The identification of the defence counsel shall be mentioned on the court order that closes the inquiry.

4 – In the case provided for by paragraph 3 above, the defendant shall be informed, on the charge document, that, if he is found guilty, he must pay the defence counsel's fees except if he granted legal aid, and that he may replace the defence counsel by a lawyer of his choice.

[*Wording of Law 20/2013*]

Article 65
Assistance to several defendants

Where there is more than one defendant in the same case, they may be assisted by a single defence counsel, if that does not hamper the actions of the said defence counsel.

[Wording of Law 48/2007]

Article 66
Appointed counsel

1 – The appointment of a defence counsel is notified to the defendant and to the defence counsel when they are not present in the act.

2 – The appointed counsel may be exempted from the case if he invokes a reason that the court finds fair.

3 – The court may always replace the appointed counsel at the defendant's request, on reasonable grounds.

4 – Until he is replaced, the counsel appointed for an act shall perform his duties in subsequent acts of the case.

5 – The appointed counsel performs his duties against remuneration, whose amount and terms shall be decided by the court, within limits set forth at the tariff adopted by the Ministry of Justice, or considering fees normally paid for similar services. The payment shall be made, accordingly, by the defendant, the party assisting the public prosecutor (assistente), the civil parties or the Justice Ministry Treasury.

[*Wording of Law 59/98*]

Article 67
Replacement of a defence counsel

1 – If, regarding an act implying the need for assistance, the defence counsel does not appear, if he leaves before the act is finished, or refuses to exercise or quits defence, the court shall immediately appoint another defence counsel. However, if an immediate appointment is not possible or adequate, the court may also decide to interrupt the act.

2 – If the defence counsel is replaced during the examining debate or hearing, the court may, ex officio or upon request of the new defence counsel, provide for an interruption, so that the new defence counsel may discuss the case with the defendant and examine the files.

3 – Instead of the interruption mentioned above, the court may choose, if absolutely necessary, to postpone the act or the hearing for not more than five days.

[*Wording of Rect. No. 100-A/2007*]

(…)

TITLE IV
PARTY ASSISTING THE PUBLIC PROSECUTOR

(...)

Article 69
Procedural status and powers of the parties assisting the Public Prosecutor

1 – The role of the parties assisting the Public Prosecutor is that of collaborating with the Public Prosecutor, to whose activity they subordinate their intervention in proceedings, unless otherwise provided for by law.

2 – It is especially incumbent on the parties assisting the Public Prosecutor to:

a) Intervene in the inquiry and in the preliminary judicial stage by providing evidence and by requesting that steps deemed necessary be taken and to be given information on any court decisions related to such activities;

b) Bring charges independent from those of the Public Prosecutor and, in case of proceedings depending upon private accusation, even when the Public Prosecutor decides not to prosecute;

c) Lodge appeals against any decisions affecting them, even if the Public Prosecutor has not done so. To this end, the party assisting the Public Prosecutor shall have access to any indispensable procedural data, without prejudice to the regime applicable to secrecy during the inquiry stage.

[Wording of Law 26/2010]

(…)

BOOK II
ON PROCEDURAL ACTS

TITLE I
GENERAL PROVISIONS
(…)

Article 86
Disclosure of proceedings and legal secrecy

1 – Criminal proceedings are public under penalty of nullity except in cases specifically provided for by law.

2 – Upon request of the defendant, of the party assisting the public prosecutor (assistente) or of the victim, after hearing the Public Prosecutor, the Examining Judge (juiz de instrução) may determine, by unappealable decision, that the proceedings are covered by legal secrecy during inquiry, where he believes that disclosure would affect the rights of those subjects or participants in proceedings.

3 – Where the Public Prosecutor believes that, for the sake of the investigation or of the rights of parties, the proceedings should be secret, he may determine that during the inquiry the proceedings shall be bound by legal secrecy. Such decision must be validated by the Examining Judge within, at most, 72 hours.

4 – Where, under paragraph 3 above, the proceedings are covered by legal secrecy, the Public Prosecutor, ex officio or upon request of the defendant, the party assisting the public prosecutor or the victim, may determine secrecy to be lifted at any stage of the inquiry.

5 – Where the defendant, the party assisting the public prosecutor (assistente) or the victim requests legal secrecy to be lifted but the Public Prosecutor fails to do so, the files shall be transmitted to the Examining Judge for decision by unappealable order.

6 – Disclosure of proceedings implies, under the law and, especially, pursuant to articles hereunder, the following rights:

a) Of public in general to attend the preliminary hearing and the performance of procedural acts at trial stage;

b) The right for procedural acts to be reported or reproduced by the media;

c) The right to consult the files and to get copies, extracts, or certified copies of the relevant documents.

7 – Disclosure does not cover any data connected to privacy when these are not valid as evidence. The judicial authority shall specify by order, ex officio or upon request, which data are covered by legal secrecy and shall order, if necessary, their destruction or delivery to the concerned person.

8 – Legal secrecy binds all procedural subjects and participants, as well as people who, for any reason, have learned about the proceedings and their subject-matter. It implies the prohibition to:

a) Attend the performance or to be informed on the substance of the procedural activity which the person is not allowed or supposed to attend;

b) Provide information on the occurrence of the procedural activity or on its follow-up, whatever the reason for information may be.

9 – The judicial authority may, with a valid justification, provide information or allow or order information to be provided to specific persons on the content of the act or document under legal secrecy, where that information does not affect the investigation and if it is found that:

a) The information is useful in order to clarify the truth; or

b) The information is essential for the exercise of rights by the parties concerned.

10 – People referred to in paragraph 9 above shall be identified in the files, with the indication of the act or document whose content they were informed of, and they will be bound by legal secrecy in any case.

11 – The judicial authority may allow the delivery of a certificate informing on the substance of the activity or document under legal secrecy whenever the disclosure may be necessary in the framework of a criminal case or of disciplinary proceedings of a public character, or of a request for civil compensation.

12 – Where the case is related to a car crash caused by a road vehicle, the judicial authority shall allow the delivery of certified copies:

a) Disclosing the activity or document under legal secrecy, for the purposes referred to in the last part of the preceding paragraph, subject to an application justified on the basis of Article 72, paragraph 1, subparagraph a);

b) Of a Police Information on a traffic accident for the purposes of extra-judicial settlement of a dispute where an Insurance Company is a party following transfer of civil liability.

13 – Legal secrecy does not prevent the supply of public information by the judicial authority, when necessary in order to clarify the truth and when that information does not affect the investigation:

a) At the request of persons publicly involved, or

b) In order to safeguard the security of persons and assets, or public order.

[*Wording of Law 26/2010*]

(…)

Article 91
Oath and commitment

1 - Witnesses take the following oath: "I swear, by my honour, to tell all truth and nothing but the truth".

2 - Experts and interpreters render the following commitment, at any stage of the proceedings: "I undertake, by my honour, to faithfully perform the duties that are entrusted to me".

3 - The oath mentioned in paragraph 1 above is taken before the competent judicial authority and the commitment provided for in the preceding paragraph is rendered before the competent judicial authority or criminal police authority, who previously advise the concerned person on the penalties incurred upon refusal or failure to comply therewith.

4 - Refusal to take an oath or to render a commitment is equivalent to refusal to testify or to perform duties.

5 - The oath and the commitment, once taken and rendered, do not need to be renewed in the same stage of the same proceedings.

6 – The following individuals are not bound to take the oath or to render the commitment mentioned in the preceding paragraphs:

a) Minors under 16 years of age;

b) Any experts or interpreters who are public officials and intervene whilst performing their duties.

[Wording of Law 48/2007]

(…)

TITLE II
THE FORM OF THE ACTS AND THEIR DOCUMENTATION
(…)

Article 99
Record

1 – The record is the instrument intended to certify the terms under which the procedural acts were carried out, such acts having to be documented pursuant to the law and the person who drafts the record having attended the act. The record is also intended to collect any statements, applications, requests and oral orders made or presented before the said person.

2 – The record concerning the preliminary hearing and the court hearing is referred to as minutes and is additionally governed by the legal provisions applied thereto pursuant to this Code.

3 – Besides the requirements laid down for written acts, the record includes the following details:

a) Particulars of the persons having intervened in the act;

b) Causes, if known, for failure of a person, whose intervention in the act was foreseen, to attend such act;

c) Detailed description of the actions carried out, of the intervention of each of the procedural parties, of the statements rendered, of the way ant the circumstances under which they were rendered, including, whenever an audio or audio-visual recording is made, indication of the start and end time of each statement, of the documents submitted or received and of the outcome, with a view to ensuring the accurate report of what was said and done;

d) Any fact deemed relevant for the examination of the evidence or of the legality of the act.

4 – The provisions of article 169 apply accordingly.

[Wording of Law 20/2013]

(…)

Article 101
Registration and transcription

1 – The officer mentioned in paragraph 1 of the preceding article may draft the record using stenographic, stenotype or other different means of common writing, as well as resort to audio or audio-visual recording of the statements and decisions verbally made, in cases foreseen by law.

2 – When stenographic, stenotype or other different means of common writing are used, the officer who has resorted to them makes the transcription within the shortest possible time and the entity which presided over the act must make sure that the transcription, before its respective signature, is in accordance with the said statements and decisions.

3 – The stenographed pages and the stenotyped or recorded tapes are kept in a sealed envelope to the order of the court and in the record mention shall be made to every opening and every closure of the records kept by the entity responsible for carrying out the act.

4 – Whenever an audio or an audio-visual recording is made, a transcription shall not be carried out and the officer, without prejudice to the provisions concerning the secrecy during the inquiry stage, shall deliver, within no more than 48 hours, a copy to any party to the case having asked to be provided with one and it shall also send, in case of appeal, a copy to the higher court.

5 – In case of appeal, where strictly necessary for a good ruling to be given as regards the case, the rapporteur, by means of a substantiated order, may ask the court hearing the appeal the transcription of all or of part of the judgment.

[Wording of Law 20/2013]

(…)

TITLE IV
ON THE SERVICE OF ACTS
AND THE SUMMONS THEREFOR
(…)

Article 116
Unjustified non-appearance

1 – If a person properly summoned or notified fails to appear without any justification on the appointed day, time and venue, the judge shall order the defaulting party to pay an amount between 2 and 10 account units.

2 – Subject to the preceding paragraph, the judge may order, ex officio or upon request, the person failing to appear without justification to be detained for the necessary time to allow performing the act and may order the defaulting party to pay the expenses deriving from his non-appearance, notably those related to notices, expedient and travelling of persons. In the case of a defendant, a provisional custody measure may also apply, if legally admissible.

3 – If the Public Prosecutor or the counsel chosen or appointed for the proceedings fails to appear, information thereon shall be provided to his hierarchy or to the Bar Association, accordingly.

4 – Article 68 (5) shall apply accordingly.

[*Wording of Law 59/98*]

Article 117
Justification of absence

1 – Failure to appear is deemed justified whenever the absence has been caused by a fact that may not be attributed to the absent person and which prevented him from appearing for the procedural act to which he had been summoned or notified.

2 – The impossibility to appear must be announced within five days prior to the relevant act, if predictable, or on the day and time fixed for the performance of the act, if the absence was unpredictable. The communication shall include the reason for the absence, the place where the absent person may be found and the predictable duration of the impediment, under penalty of non-justification of the absence.

3 – Evidence justifying the impossibility to appear must be submitted together with the communication mentioned in the preceding paragraph, except in the case of an unpredictable impediment announced on the very day and time. In this case, the said evidence may be submitted until the following third business day. The party may not indicate more than three witnesses.

4 – If sickness is invoked, the absent person must provide a medical certificate specifying the incapacity to appear or the serious inconvenience of the appearance and the estimated duration of the impediment. The judicial authority may order the appearance of the physician having signed the certificate, and may also request confirmation of the invoked disease by another physician.

5 – Any other evidence is allowed in the case of impossibility to obtain a medical certificate.

6 – If the concerned person is unable to appear but is able to make statements or to testify, he will do so on the day, time and venue appointed by the judicial authority, following opinion from the physician if necessary.

7 – Any false justification given for the absence shall be punished under Articles 260 and 360 of the Criminal Code, as the case may be.

8 – The provisions of the preceding paragraphs on non-appearance justification do not apply to lawyers. The judicial authority may report any unjustified absences to the disciplinary body of the Bar.

[*Wording of Law 48/2007*]

(…)

BOOK III
ON EVIDENCE
(…)

TITLE II
ON EVIDENCE MEANS

CHAPTER I
ON TESTIMONIAL EVIDENCE

Article 128
Object and limits of testimony

1 – A witness is heard on facts that (s)he directly knows about and that are the object of evidence.

2 – Unless otherwise provided for by law, before the court determines the sentence or security measure to be imposed, the examination on facts related to the defendant's personality and character, as well as regarding his/her personal conditions and previous conduct is only allowed to the extent strictly necessary in order to prove the elements of the offence, in particular the perpetrator's guilt, or in view of the enforcement of a coercive or patrimonial guarantee measure.

Article 129
Indirect testimony

1 – If the testimony is based upon what was heard from specific persons, the judge may call those persons to testify. Failure to do so, the testimony given may not, in that part, be used as evidence, except where it hasn't been possible to interview the appointed persons due to death, subsequent mental disorder or impossibility of being found.

2 – The provisions of paragraph 1 above apply to cases where the testimony is based upon the reading of a document written by a person other than the witness.

3 – The testimony of whoever refuses or is not in a position to indicate the person or source through which he came across the facts may not be used as evidence.

Article 130
Public voices and personal beliefs

1 – The reproduction of voices or public rumours is not admissible as testimony.

2 – The expression of mere personal beliefs on facts or their interpretation may only be allowed in the following cases and strictly as indicated below:

a) When it is impossible to separate it from the testimony on concrete facts;

b) Where it takes place in the scope of any kind of science, technique or art;

c) When it occurs at the stage of determination of a sanction.

Article 131
Capacity and duty to testify

1 – Any person not lacking legal capacity due to mental disorder can be a witness and may only refuse to testify in cases provided for by law.

2 – The judicial authority ascertains the physical or mental ability of any person to testify, whenever necessary in order to assess that person's credibility and when it may be done without delaying the regular course of proceedings.

3 – Where a person less than 18 years old is called to testify on crimes against minors' sexual freedom and self-determination, that person's personality may be assessed in a forensic expertise.

4 – The above-referenced enquiries, when ordered before the testimony, do not prevent the latter from taking place.

[*Wording of Law 48/2007*]

Article 132
Rights and duties of witnesses

1 – Except as otherwise provided for by law, every witness has the duty to:

a) Appear, at the right time and venue, before the authority having legitimately summoned or notified the witness, and to remain available until released;

b) Giving oath, when heard by a judicial authority;

c) Observing any indications legitimately given on how testimony should be given;

d) Answer truthfully on questions addressed.

2 – A witness is not compelled to reply any questions when alleging that his replies might lead to his prosecution.

3 – In order to be notified, the witness may indicate his residence, workplace or another address of his choice.

4 – When requested to testify, even during an act forbidden to the public, a witness may be accompanied by a lawyer who is bound to inform him, if necessary, on his rights, without intervening in the interview.

5 – A lawyer assisting a defendant in criminal proceedings may not accompany a witness under paragraph 4 above.

[*Wording of Law 48/2007*]

Article 133
Impediments

1 – The following may not testify as witnesses:

a) The defendant and co-defendants in the same proceedings or in joint proceedings, as long as they keep that status;

b) Persons having the status of "assistentes" (party assisting the public prosecutor) from the moment when they acquire that status;

c) Civil parties;

d) Experts, as regards the expertise reports carried out.

2 – In the case of severance of proceedings, the defendants regarding the same offence or a related offence, even when already convicted by a final sentence, may only testify as witnesses if they expressly consent to do so.

[*Wording of Law 48/2007*]

Article 134
Refusal to testify

1 – The following persons may refuse to testify as witnesses:

a) The descendants, ancestors, siblings or similar until the 2nd degree, the foster parents, adopted children and the defendant's spouse;

b) Whoever has been the defendant's spouse or who, being of another or of the same sex, cohabits or has cohabited with him as though they were spouses, regarding facts occurred during the marriage or cohabitation.

2 – The competent body receiving the testimony shall warn, under penalty of nullity, the persons mentioned in paragraph 1 on their right to refuse testifying.

[*Wording of Law 48/2007*]

Article 135
Professional secrecy

1 – The religion or religious confession ministers and the attorneys, doctors, journalists, members of credit institutions and all other persons to whom the law allows or imposes secrecy may exempt themselves from testifying on facts covered by secrecy.

2 – In the event of grounded doubts as to the legitimacy of the exemption, the judicial authority before which the exemption has been invoked makes the necessary investigations. If, after the investigation, it is found that the exemption is illegitimate, the authority shall order, or require the court to order, the witness to testify.

3 – A higher jurisdiction than the court where the exemption has been invoked or - where the exemption has been argued before the Supreme Court of Justice - the plenary of criminal sections, may decide that the witness will testify regardless of professional secrecy whenever justified, according to the principle of prevailing interest considering, in particular, the need for evidence in order to clarify the truth, the gravity of the crime and the need to protect legal assets. Intervention is ordered by the judge, ex officio or upon request.

4 – In cases foreseen by paragraphs 2 and 3 above, the judicial authority or court takes the decision after hearing the representative body of the profession bound by professional secrecy, under the terms and for the purposes of the law applying to that professional body.

5 – The provisions of paragraphs 3 and 4 do not apply to religious secrecy.

[*Wording of Law 48/2007*]

Article 136
Officials' secrecy

1 – Officials cannot be examined on facts covered by secrecy, which they came across while performing their duties.

2 – Paragraphs 2 and 3 of the preceding article shall apply accordingly.

Article 137
State secrecy

1 – Witnesses cannot be interviewed on facts covered by State secrecy.

2 – For the purposes of this article, State secrecy covers, in particular, facts whose disclosure, even though not being a criminal offence, may affect internal or external defence, the security of the Portuguese State or the safeguard of constitutional order.

3 – If the witness claims State secrecy, the latter must be confirmed within 30 days through the Minister of Justice. After that period of time, if the confirmation hasn't been provided, the testimony must be given.

Article 138
Examination rules

1 – Testimony is a personal act that may never be given through a representative.

2 – Witnesses should never be asked any suggestive or irrelevant questions, or questions that might affect the spontaneity or sincerity of answers given.

3 – The examination must focus, in the first place, on data needed for the witness identification, on his/her family or interest connections, if any, with the defendant, the victim, the party assisting the public prosecutor (assistente), the civil parties and with other witnesses, and on any circumstances that might be relevant in order to assess the testimony credibility. After that, the witness gives oath if bound to do so, and will then testify according to the law and within legal limits.

4 – Whenever found necessary, witnesses may be shown any documents or parts of the files, documents connected to the case, tools used when committing the crime or any seized objects.

5 – If the witness provides any object or document that may be used as evidence, reference is made to its submission and the object/document is inserted in the files or kept as appropriate.

Article 139
Immunities, prerogatives and special protective measures

1 – All immunities and prerogatives provided for by law regarding the duty to testify and how or where testimony should be given shall apply in criminal proceedings.

2 – The protection of witnesses and other participants in proceedings against any forms of threat, pressure or intimidation, in particular in cases of terrorism, violent or highly organised crime, shall be governed by special legislation.

3 – The possibility of adversarial procedure as legally allowed in each case is ensured.

[*Wording of Law 59/98*]

CHAPTER II
STATEMENTS BY THE DEFENDANT, THE PARTY ASSISTING THE PUBLIC PROSECUTOR AND THE CIVIL PARTIES

Article 140
Statements by the defendant: General rules

1 – When making statements and even if arrested or detained, the defendant shall be individually free, unless special caution is necessary in order to prevent the risk of evasion or violence.

2 – Articles 128 and 138 shall apply to the defendant's statements, unless otherwise provided for by law.

3 – A defendant never takes oath.

Article 141
First preliminary court examination of an arrested defendant

1 – The arrested defendant who is not to face trial immediately shall be examined by the Examining Judge within forty-eight hours following his/her arrest and for such a purpose a detailed description of the grounds for the arrest and of the evidence supporting such an arrest is given.

2 – The examination is exclusively conducted by the Examining Judge, with the assistance of a Public Prosecutor and of the defense counsel and in the presence of a court clerk. The presence of any other person shall not be allowed unless, for security reasons, the person arrested must be kept in sight by the police.

3 – Questions regarding his/her name, parents, place of birth, date of birth, civil status, profession, home address and workplace shall be put to the defendant who may be required, if necessary, to show a valid official identification document. He/she shall be warned about the fact that he/she shall be held criminally liable should he/she fail to answer these questions or provide false answers.

4 – The Examining Judge shall then inform the defendant of the following:

a) The rights referred to in article 61(1), explaining such rights to him/her if necessary;

b) Should he/she choose not to remain silent, the statements made by him/her might be used in the court of law, even if he/she is tried *in absentia* or makes no statements during the trial hearing, and shall be subject to a free assessment of the evidence;

c) Of the reasons behind his/her arrest;

d) Of the acts of which he/she stands accused, including, if known, the circumstances of time, place and method; and

e) Of the elements contained in the case file and that evidence the charges brought, whenever the communication of such elements does not jeopardize the investigation, does not hamper the discovery of the truth and does not endanger the life, the physical or psychological integrity or the freedom of the parties to the case or of the victims of the crime;
and all the information, except the one foreseen in sub-paragraph a) above, shall be included in the records made for questioning purposes.

5 – When making statements, the defendant may confess or deny the facts and his/her participation in them and point out the causes that may exclude the unlawfulness or guilt, as well as any circumstances that may be relevant for determining his/her responsibility or for setting the specific extent of the sentence.

6 – During the examination, the Public Prosecutor and the defense counsel shall, without prejudice to the right of invoking nullities, refrain from any interference. The judge may allow them to make requests for the clarification of the answers given by the defendant. Once the examination is concluded, they may ask the judge to put questions to the defendant deemed relevant for the discovery of the truth. The judge shall decide, by means of an order from which no appeal shall lie, whether the request shall be made in the presence of the defendant and whether the questions to be put are relevant.

7 – The defendant's examination is carried out, as a general rule, through sound or audiovisual recording. Other means may only be used, namely stenographic or stenotype means or any other technical mean capable of ensuring the full reproduction of the questions put and the answers given, or

the documentation through court records, when the means preferred are not available. The said information shall then have to be included in the records.

8 – Whenever the questions put and the answers given are the object of sound or audiovisual recording, the time when the recording started and ended must be included in the records.

9 – The provisions laid down in article 101 shall apply accordingly.

[Wording of Law 20/2013]

(…)

Article 143
First out-of-court preliminary questioning of an arrested defendant

1 – The arrested defendant who is not examined by the Examining Judge immediately after his/her arrest shall be brought before the competent public prosecutor of the area where the arrest took place and the public prosecutor shall then hear him/her briefly.

2 – The questioning shall abide, in the applicable part, by the provisions relating to the first preliminary court examination of an arrested defendant.

3 – After the brief questioning, the public prosecutor, should he not release the person arrested, shall take the necessary steps so that the defendant may be brought before the Examining Judge pursuant to articles 141 and 142.

4 – In cases of terrorism, violent or highly organized crime, the public prosecutor may prevent the person arrested from having contacts with persons other than his/her defense counsel, before the first preliminary court examination.

[Wording of Law 48/2007]

Article 144
Other questionings

1 – The subsequent questioning of a detained defendant and the questioning of a defendant who is not in custody are led, during the inquiry, by the Public Prosecutor and, during the preliminary judicial stage and trial, by a judge, under the relevant provisions of this chapter.

2 – During the inquiry, the questioning mentioned in the preceding paragraph may be conducted by a criminal police body on which the Public Prosecutor has delegated those powers. For all relevant purposes, it shall abide by the provisions of this chapter, with the exception of those laid down in article 141(4)(b)(e).

3 – The questioning of a detained defendant always takes place with the assistance of a defence counsel.

4 – The entity questioning a defendant who is not in custody shall inform him/her in advance that he/she has the right to be assisted by a lawyer.

[Wording of Law 20/2013]

(…)

CHAPTER III
SEIZURES

Article 182
Professional secrecy or secrecy binding officials and State secrecy

1 - Persons mentioned in articles 135 to 137 shall provide the judicial authority, upon request, with any documents or items that may be in their possession and that should be seized, except where they invoke, in writing, professional secrecy, secrecy binding officials or State secrecy.

2 - If the refusal is based upon professional secrecy or secrecy binding officials, the provisions of article 135(2)(3) and of article 136(2) shall apply accordingly.

3 - If the refusal is based upon State secrecy, the provisions of article 137(3) shall apply accordingly.

[Wording of Law 59/98]

(…)

CHAPTER IV
TELEPHONE TAPPING

Article 187
Admissibility

1 - Interception and tape recording of telephone conversations or communications may only be authorized during the inquiry where there are grounds for believing that this step is indispensable for the discovery of the truth or that the evidence would, by any other means, be impossible or very hard to collect. Such authorization shall be granted by means of a reasoned order issued by the Examining Judge and upon the request of the Public Prosecution Service, as regards the following criminal offences:

a) Criminal offences to which a custodial sentence with a maximum limit over three years applies;

b) Drug-related offences;

c) Possession of a prohibited weapon and illicit trafficking in weapons;

d) Smuggling offences;

e) Insult, threat, coercion, disclosure of private life and disturbance of the peace and quiet, whenever committed by means of a telephone device;

f) Threat with the commission of a criminal offence or abuse and simulation of danger signals; or

g) Escape from justice, whenever the defendant has been sentenced for a criminal offence foreseen in the preceding sub-paragraphs.

2 – The authorization provided for in paragraph 1 above may be requested to the judge with jurisdiction over the locations from where the telephone conversation or communication is likely to be effected, or over the central office of the entity competent to conduct the criminal investigation, when dealing with the following criminal offences:

a) Criminal offences to which a custodial sentence with a maximum limit over three years applies;

b) Illegal restraint, kidnapping and taking of hostages;

c) Offences against cultural identity and personal integrity, as provided for in Book II, Title III, of the Criminal Code and in the Criminal Law on Violations of International Humanitarian Law;

d) Offences against State security foreseen in Book II, Title V, Chapter I, of the Criminal Code;

e) Counterfeiting of currency or securities equivalent to currency foreseen in articles 262, 264 - to the extent that it refers to article 262- and article 267 – to the extent that it refers to articles 262 and 264 - of the Criminal Code;

f) Offences covered by a convention on the safety of air or maritime navigation.

3 – In the cases foreseen in the preceding paragraphs, the authorization is communicated within a seventy-two hour period to the judge to whom the case was referred, who is responsible for carrying out the subsequent jurisdictional acts.

4 - Regardless of the entity who owns the means of communication used, both the interception and the recording referred to in the preceding paragraphs can only be authorised against:

a) The suspect or the defendant;

b) Any person acting as an intermediary, against whom there are grounds to believe that he/she receives or transmits messages aimed at, or coming from, the suspect or the defendant; or

c) A victim of a crime upon his/her effective or alleged consent.

5 - No interception and recording of telephone conversations or communications between the defendant and his defence counsel is allowed unless the judge has reasonable grounds to believe that the said conversation or communication is the object or the constitutive element of a criminal offence.

6 - The interception and the recording of any conversations or communications are authorised for a maximum time-limit of three months, renewable for equal periods, provided that the respective requirements for admissibility have been met.

7 - Without prejudice to article 248, the recording of conversations or communications cannot be used in the scope of any other proceedings, either on-going or to be instituted, unless it has resulted from the interception of a means of communication used by the person referred to in paragraph 4 above and insofar as it proves to be indispensable for obtaining evidence of the crime set out in paragraph 1 above.

8 - In the cases provided for in paragraph 7 above, the technical means in which conversations or communications have been recorded, as well as the decisions having clearly stated the need for the interceptions are enclosed, following a judge's ruling, to the proceedings in the scope of which they are to be used as evidence. If necessary, copies thereof shall be made.

[Wording of Law 48/2007]

Section 188
Formalities of the operations

1 – The criminal police body carrying out the interception and the recording referred to in the preceding article draws up the respective records and produces a report pointing out the parts which bear relevance to the evidence, describing in brief the respective contents and explaining the respective importance for the discovery of the truth.

2 – The provisions set forth in the preceding paragraph do not prevent the criminal police body responsible for the investigation from having previous knowledge of the contents of the intercepted communication in order to perform the investigative steps deemed necessary and urgent for purposes of ensuring any means of evidence.

3 – The criminal police body mentioned in paragraph 1 above provides the Public Prosecution Service, every fortnight counted from the first interception made, with the respective technical material, as well as with the respective records and reports.

4 – The Public Prosecution Service submits the elements mentioned in the preceding paragraph to the judge within a maximum time limit of forty-eight hours.

5 – In order to become acquainted with the content of the conversations or communications, the judge shall be assisted, whenever appropriate, by a criminal police body and shall appoint, if necessary, an interpreter.

6 – Without prejudice to the provisions set forth in paragraph 7 of the preceding article, the judge shall order the immediate destruction of the technical materials and reports clearly bearing no interest to the case at hand:

a) Concerning conversations between persons not referred to in paragraph 4 of the preceding article;

b) Covering matters under professional secrecy, under secrecy binding officials or under State secrecy; or

c) The disclosure of which may seriously affect rights, liberties and guarantees;
and all interveners in the operations shall be bound by the duty of secrecy as to what has been disclosed through the said conversations.

7 – During the inquiry, the judge shall order, upon the request of the Public Prosecution Service, the transcription into and annexation to the proceedings of the conversations and communications which, on solid grounds, justify the application of coercive or patrimonial guarantee measures, with the exception of the Statement of Identity and Residence.

8 – Upon conclusion of the inquiry stage, both the party assisting the Public Prosecutor and the defendant may accede to the technical materials of the conversations or communications and obtain, at their own expense, copies of the parts which they intend to transcribe for purposes of annexation to the case, as well as of the reports foreseen in paragraph 1 above, until the expiry of the time-limits given for purposes of requesting the opening of the preliminary judicial stage or for purposes of producing the defense statement.

9 – Conversations or communications that can be used as evidence are only those which:

a) The Public Prosecution Service orders the criminal police body responsible for the interception and recording to transcribe and which have been pointed out in the indictment as being means of evidence;

b) The defendant transcribes from the copies foreseen in the preceding paragraph and encloses to the application for the opening of the preliminary judicial stage or to the production of the defense statement; or

c) The party assisting the Public Prosecutor transcribes from the copies foreseen in the preceding paragraph and encloses to the case within the time limit foreseen for requesting the opening of the

preliminary judicial stage, even if such a party does not request the said opening or has no legitimacy to do so.

10 – The court may hear the recordings so as to determine the correction of the transcriptions already made or the respective annexation to the proceedings of new transcriptions, whenever needed for purposes of discovering the truth and of giving a just decision on the case.

11 – The persons whose conversations or communications have been heard and transcribed may examine the respective technical materials until the closure of the trial hearing.

12 – The technical materials concerning conversations or communications which are not transcribed for purposes of being used as means of evidence are kept inside sealed envelopes, upon an order by the court, and destroyed after the decision on the case has acquired legal force.

13 – After the decision has become final, as mentioned in the preceding paragraph, the technical materials which have not been destroyed shall be kept inside a sealed envelope, enclosed to the proceedings, and may only be used should an extraordinary appeal be lodged.

[Wording of Law 48/2007]

Article 189
Scope

1 – The provisions laid down in articles 187 and 188 shall apply accordingly to any conversation or communication transmitted through any technical means other than a telephone device, in particular by e-mail or other forms of telematics data transmission, even if kept under a digital medium, and to the interception of the communications between persons present.

2 – Obtaining and enclosing to the proceedings data regarding mobile phone tracing or records of conversations or communications may only be ordered or authorized, regardless of the stage of the proceedings, by means of an order issued by the judge, as regards criminal offences foreseen in article 187(1) and the persons mentioned in article 187(4).

[Wording of Law 48/2007]

Article 190
Nullity

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

[Wording of Law 48/2007]

(…)

BOOK IV
ON COERCIVE AND PATRIMONIAL GUARENTEE MEASURES

TITLE I
GENERAL PROVISIONS
(…)

Article 193
Principles of necessity, adequacy, and proportionality

1 – Coercive and patrimonial guarantee measures to be imposed in specific cases should be necessary and adequate to the preventive requirements of the case and proportional to the gravity of the offence and to any sanctions that might come to be imposed.

2 – Remand in custody and house arrest may only be imposed when all other coercive measures have proved to be inadequate or insufficient.

3 – When the case implies the need for a detention order under paragraph 2 above, preference should be given to house arrest whenever the latter is sufficient in order to comply with the prevention requirements.

4 – The enforcement of coercive and patrimonial guarantee measures should not affect the exercise of fundamental rights that are not inconsistent with the prevention needs implied by the case.

[*Wording of Law 48/2007*]

Article 194
Hearing of the defendant and court order imposing a coercive or patrimonial guarantee measure

1 – With the exception of the Statement of Identity and Residence, the coercive and patrimonial guarantee measures shall be imposed by means of an order issued by the Examining judge, either during the inquiry and upon request of the Public Prosecution Service or after the inquiry *ex officio*, once the public prosecutor has been heard on the matter, under penalty of nullity.

2 – During the inquiry, the judge may impose a coercive measure other than the one requested by the public prosecutor, even if heavier in terms of nature, length or manner of enforcement, on the grounds of the provisions laid down in article 204(a)(c).

3 – During the inquiry, the judge may not impose a heavier coercive measure, in terms of nature, length or manner of enforcement, on the grounds of the provisions laid down in article 204(b), nor can he impose a patrimonial guarantee measure heavier than the one requested by the public prosecutor, under penalty of nullity.

4 – The imposition of the measures provided for in paragraph 1 above is preceded by the hearing of the defendant, except for those cases in which an impediment is duly substantiated, and may take place during the first preliminary court examination, being the provisions set forth in article 141(4) always applicable to the hearing of the defendant.

5 – During the inquiry, except where there is a duly substantiated impossibility, the judge shall decide whether or not to impose a coercive or patrimonial guarantee measure on a defendant who is not under arrest within five days following the receipt of the public prosecutor's request.

6 – The substantiation of the order by means of which any coercive or patrimonial guarantee measure is imposed, with the exception of the Statement of Identity and Residence, shall contain, under penalty of nullity:

a) A description of the specific facts of which the defendant stands accused, including, if known, the circumstances of time, place and method;

b) A statement of the elements contained in the case file which evidence the charges brought against the defendant, whenever the communication of such elements does not seriously jeopardize the investigation, does not hamper the discovery of the truth and does not endanger the life, the physical or psychological integrity or the freedom of the parties to the case or of the victims of the crime;

c) The legal qualification of the facts of which the defendant stands accused;

d) A reference to the specific facts which meet the requirements for the imposition of the measure, including those foreseen in articles 193 and 204.

7 – Without prejudice to subparagraph b) of the preceding paragraph, facts or elements contained in the case file but not communicated to the defendant during the hearing mentioned in paragraph 3 above shall not be taken into account when substantiating the imposition of a coercive or patrimonial guarantee measure on the defendant, with the exception of the Statement of Identity and Residence.

8 – Without prejudice to subparagraph b) of paragraph 6 above, both the defendant and his/her defence counsel may be granted access to the elements contained in the case file which are instrumental to the imposition of the coercive or patrimonial guarantee measure, with the exception of the Statement of Identity and Residence, during the preliminary court examination and within the period of time provided for the lodging of an appeal.

9 – The order to which mention is made in paragraph 1 above, containing a warning regarding the consequences of non-compliance with the obligations imposed, is served on the defendant.

10 – In case of remand in custody, the order is immediately communicated to the defence counsel and, whenever the defendant so wishes, to a relative or person of his/her trust.

[Wording of Law 20/2013]

(…)

TITLE II
COERCIVE MEASURES

CHAPTER I
ADMISSIBLE MEASURES

Article 196
Statement of Identity and Residence

1 – The judicial authority or criminal police body shall require any person who acquires the status of defendant to fill in a Statement of Identity and Residence (Termo de Identidade e Residência), even if the relevant person has already been identified under Article 250.

2 – In order to be notified by simple postal delivery as required by Article 113, paragraph 1, subparagraph c), the defendant shall indicate on the Statement his residence, workplace or another address at his discretion.

3 – The Statement should mention that the defendant was informed:

a) On his obligation to appear before the competent authority or to be readily available whenever his presence is required by law or when duly summoned to appear;

b) On his obligation not to change his place of residence, nor to be absent from it for more than five days, unless he reports a new place of residence or an address where he may be reached;

c) That any ulterior service of process (notification) shall be made by ordinary postal delivery to the reported address under paragraph 2 above, except where the defendant indicates another address by application to be submitted or sent by registered mail to the Clerk's office of the Court where the case is pending;

d) That failure to comply with the provisions above shall imply the need for his representation by a

defence counsel in all procedural acts which he has the right or the duty to attend, as well as his trial in absentia, pursuant to Article 333;

e) That, in the case of conviction, the Statement of Identity and Residence will only be extinguished when the sentence expires.

4 – The enforcement of this coercive measure may always go together with other measures provided for by this Book of the Code.

[Wording of Law 20/2013]

(…)

Article 202
Remand in custody pending trial

1 – Should the judge deem the measures referred to in the preceding articles inadequate or insufficient in a particular case, the judge may remand the defendant into custody whenever:

a) Evidence strongly suggests that a criminal offence punishable with a prison sentence carrying a maximum length of more than 5 years was committed with intent;

b) Evidence strongly suggests that a criminal offence corresponding to violent crime was committed with intent;

c) Evidence strongly suggests that a criminal offence of terrorism or a criminal offence corresponding to highly organised crime punishable with a prison sentence carrying a maximum length of more than 3 years was committed with intent;

d) Evidence strongly suggests that the criminal offences of aggravated bodily injury, aggravated theft, aggravated damage, computer and communications fraud, receiving stolen goods, forging or counterfeiting a document, attempt on the safety of road transport, punishable with a prison sentence carrying a maximum length of more than 3 years, were committed with intent;

e) Evidence strongly suggests that the criminal offences of possession of a prohibited weapon, possession of weapons and other devices, products or substances in prohibited places or a criminal offence with the use of a weapon, pursuant to the rules governing weapons and respective ammunitions, punishable with a prison sentence carrying a maximum length of more than 3 years, were committed with intent;

f) Such a person has unlawfully entered into or stayed in national territory or whenever against such a person a procedure with a view to extradition or deportation is pending.

2 – Should the defendant to be remanded into custody suffer from a mental disorder, the judge, after hearing the defence counsel and, whenever possible, a relative of the defendant, may, while the mental disorder persists, in lieu of remanding the defendant into custody decide that he/she be remanded to a psychiatric hospital or to another suitable similar institution, while adopting the necessary precautionary steps so as to prevent the defendant from escaping and re-offending.

[Wording of Law 26/2010]

Article 203
Breach of the obligations imposed

1 – Whenever the obligations imposed as a result of the enforcement of a coercive measure are breached, the judge may, while taking into account the seriousness of the offence and the reasons for

the breach, impose other coercive measures provided for in this Code and admissible in the case at hand.

2 – Without prejudice to article 193(2)(3), the judge may impose the remand in custody, provided that the offence is punishable with a prison sentence carrying a maximum length of more than 3 years:

a) In the cases foreseen in the preceding paragraph; or

b) Whenever evidence strongly suggests that, after enforcement of the coercive measure, the defendant committed with intent a criminal offence alike in nature and punishable with a prison sentence carrying a maximum length of more than 3 years.

[Wording of Law 26/2010]

CHAPTER II
MEASURE ENFORCEMENT REQUIREMENTS

Article 204
General requirements

Except for the measure provided for by Article 196, no coercive measures may be imposed if, when deciding on the measure, the following requirements are not met:

a) Evasion or danger of evasion;

b) Risk of disturbing the normal course of the inquiry or the investigative stage and, in particular, danger to the collection, preservation or veracity of evidence; or

c) Risk, due to the nature and circumstances of the offence or of the defendant's personality, that he continues his criminal activity or gravely affects public order and peace.

[*Wording of Law 48/2007*]

(…)

Article 211
Suspension of the enforcement of the remand in custody

1 – The judge may, through the order issued imposing the remand in custody or during its enforcement, provide that the enforcement of the measure imposed on the defendant be suspended should a serious illness, a pregnancy or a postnatal period so require. Suspension shall cease to apply as soon as the circumstances which led to the suspension are no longer present and, in any case, as far as the postnatal period is concerned, suspension shall cease to apply at the end of the 3rd month following childbirth.

2 – During the period of suspension of the enforcement of the remand in custody, the defendant shall be subject to the measure provided for in article 201 and to any other measure which proves to be suited to and consistent with the defendant's condition, in particular, the measure of hospitalisation.

CHAPTER III
Revocation, alteration and discontinuance of measures

Article 213
Review of the prerequisites on which the remand in custody and the house arrest depend upon

1 – The judge shall review, *ex officio*, the prerequisites on which the remand in custody or the house arrest depend upon, deciding on whether such measures are to be maintained, replaced or revoked:

a) Within a maximum period of three months from the date of their enforcement or last review; and

b) Whenever, in the scope of the case, charges have been brought or an indictment has been produced or a judgment has been handed down although not entailing the discontinuance of the measure imposed until such time as the judgment becomes final.

2 – In the decision referred to in the preceding paragraph or whenever necessary, the judge verifies the grounds for increasing the length of time on remand or on house arrest, under the terms and for the purposes set out in article 215(2)(3)(5) and in article 218(3).

3 – Whenever necessary, the judge hears the public prosecutor and the defendant.

4 – In order to substantiate the decisions on the maintenance, replacement or revocation of the remand in custody or of the house arrest, the judge, *ex officio* or upon request of the public prosecutor or of the defendant, may ask that a forensic expertise assessing the defendant's personality and a social report or information from the social rehabilitation services be carried out, provided that the defendant consents thereto.

5 – The decision maintaining the remand in custody or the house arrest can be appealed against in general terms, but does not render the need to adjudicate on an appeal against a prior decision through which the said measure was imposed or maintained subsequently worthless.

[Wording of Law 48/2007]

(…)

Article 215
Maximum time-limits of remand in custody

1 – Remand in custody is extinguished whenever, since its beginning, the following periods have elapsed:

a) Four months without charges having been brought;

b) Eight months without a decision to indict having been rendered in the scope of a preliminary judicial stage;

c) One year and two months without sentencing at first instance;

d) One year and six months without a sentence having become final.

2 – The time-limits referred to in the preceding paragraph shall be extended to six months, ten months, one year and six months and two years, respectively, in cases of terrorism, violent or highly organised crime or when a prosecution is launched for an offence punishable with a prison sentence carrying a maximum length of more than 8 years, or for an offence:

a) Foreseen in article 299, in article 318(1), in articles 319, 326 and 331 or in article 333(1) of the Criminal Code and in articles 30, 79 and 80 of the Military Justice Code, approved by Law No 100/2003 of 15 November 2003;

b) Of vehicle theft or of forgery of vehicle documents or of vehicle identifying elements;

c) Of forging currency, securities and stamped value, seals and objects equivalent to seals or of the respective passing into circulation;

d) Of fraud, fraudulent insolvency, prejudicial management in economic units of the public or cooperative sector, forgery, corruption, embezzlement or corrupt economic participation in a transaction;

e) Of laundering of the proceeds from crime;

f) Of fraudulent receipt or embezzlement of subsidies, grants or credit;

g) Covered by a convention on the safety of air or maritime navigation.

3 – The time-limits referred to in paragraph 1 above shall be extended to one year, one year and four months, two years and six months and three years and four months, respectively, whenever the proceedings refer to an offence foreseen in the preceding paragraph and which proves to be exceptionally complex namely due to the number of defendants or victims involved or to the highly organised nature of such offence.

4 – The exceptional complexity to which this article refers may only be declared in the course of the proceedings at first instance by means of a substantiated order, *ex officio* or upon request of the public prosecutor, after hearing the defendant and the party assisting the public prosecutor.

5 – To the time-limits set forth in subparagraphs c) and d) of paragraph 1 above, as well as to those correspondently set forth in paragraphs 2 and 3 above, another six months are added in case of appeal to the Constitutional Court or whenever criminal proceedings have been stayed so that a question may be referred to another court for a preliminary ruling.

6 – If the defendant has been sentenced to a term of imprisonment at first instance and the judgement handed down has been confirmed in the scope of an ordinary appeal, the maximum length of the remand in custody shall correspond to half of the sentence that has been stipulated.

7 – The existence of several criminal cases against the defendant for offences committed prior to him/her being remanded into custody does not allow for the time-limits foreseen in the preceding paragraphs to be exceeded.

8 – When calculating the maximum length of remand in custody, the time spent by the defendant under house arrest shall be included.

[Wording of Law 48/2007]

Article 216
Suspension of the running of the maximum time-limits of remand in custody

The running of the maximum time-limits foreseen in the preceding article is suspended in the event of illness of the defendant requiring hospitalisation, should his/her presence be indispensable to the further development of the investigations.

[Wording of Law 48/2007]

Article 217
Release of the defendant remanded into custody

1 – The defendant remanded into custody is released as soon as the measure is discontinued, except when another criminal case requires the defendant to be kept in custody.

2 – If the release takes place on account of having the maximum time-limits of remand in custody elapsed, the judge may impose any other measure foreseen in articles 197 to 200 on the defendant.

3 – Whenever the court considers that the release of the defendant may pose a threat to the victim, the court shall inform the latter, *ex officio* or upon request of the public prosecutor, of the date on which the release is to take place.

[Wording of Law 48/2007]

(…)

CHAPTER IV
Ways to challenge decisions

Article 219
Appeal

1 – The defendant or the public prosecutor may appeal against the decision by means of which the measures provided for in this title are imposed, replaced or maintained and such an appeal shall be heard within no more than 30 days of the date on which the court records were received.

2 – There is no relation of *lis pendens* or of *res judicata* between the appeal foreseen in the preceding paragraph and the *habeas corpus* writ, regardless of the respective grounds.

[Wording of Law 26/2010]

PART II
BOOK VI
ON PRE-TRIAL STAGES
(…)

TITLE II
THE INQUIRY

CHAPTER I
GENERAL PROVISIONS

Article 262
Purpose and scope of the inquiry

1 – The inquiry comprises a set of legal steps aiming at the investigation into the commission of a criminal offence, at identifying its perpetrator(s) and detecting his/their responsibility and at finding and collecting evidence for the purpose of deciding whether or not to prosecute.

2 – Without prejudice to the exceptions covered by this Code, the report on a criminal offence always leads to an inquiry.

Article 263
Direction of the inquiry

1 – The inquiry is directed by the Public Prosecutor, assisted by criminal police bodies.

2 – For the purposes of paragraph 1 above, criminal police bodies act under the direct supervision of the Public Prosecutor and under his functional direction.

Article 264
Jurisdiction over the inquiry

1 – The inquiry is conducted by the Public Prosecutor on duty in the area where the offence has been committed.

2 – While the place where the offence was committed remains unknown, the powers to conduct the inquiry shall fall on the Public Prosecutor on duty in the area where the offence has been reported in the first place.

3 – Where the offence has been committed abroad, the powers to conduct the inquiry belong to the Public Prosecutor on duty at the court having jurisdiction to try the case.

4 – Notwithstanding the provisions of the preceding paragraphs, in case of urgency or of risk implied by a delay, any judge or public prosecutor may perform any necessary investigative acts such as arrest or interrogation orders and, in general, any relevant acts for the collection and securing of evidence.

5 – The provisions of Articles 24 to 30 shall apply accordingly.

[*Wording of Law 59/98*]

(…)

CHAPTER II
INQUIRY ACTS

Article 267
Acts performed by Public Prosecutors

Public Prosecutors perform procedural acts and ensure any evidence means found necessary in order to reach the aims set out in Article 262, paragraph 1 above, under the terms and restrictions provided for by the following articles.

(…)

Article 269
Acts to be ordered or authorised by the Examining Judge

1 - During the inquiry stage, it is exclusively incumbent on the Examining Judge to order or authorise:

a) Expertise pursuant to article 154(3);

b) Exams pursuant to article 172(2);

c) House searches pursuant to and in compliance with the limits defined in article 177;

d) Seizure of correspondence pursuant to article 179(1);

e) Interception, recording or registration of dialogues or communications pursuant to articles 187 and 189;

f) The performance of any other acts which expressively depend on the order or authorisation granted by the Examining Judge pursuant to the law.

2 - The provisions set out in article 268(2)(3)(4) hereinabove shall apply accordingly.

[Wording of Law 20/2013]

(…)

Article 272
First interrogation and information to the defendant

1 – If an inquiry is pending against a specific person against whom there are grounded suspicions of the perpetration of a criminal offence, that person must be interrogated as defendant, unless it is not possible to notify the relevant person.

2 – When interrogating a defendant or providing for a confrontation or recognition in which the defendant must take part, the Public Prosecutor shall inform the defendant, at least twenty four hours in advance, on the day, time and venue of that procedural act.

3 – The anticipation period referred to above:

a) Is not compulsory where the defendant is under custody;

b) Does not take place regarding the interrogation provided for by Article 143 or, in cases of great urgency, where there are grounded reasons to fear that the delay may jeopardize evidence collection, or where the defendant has renounced the anticipation period.

4 – If there is a defence counsel, the latter shall be notified for the act at least twenty four hours in advance, except in cases provided for by subparagraph b) above.

[*Wording of Law 48/2007*]

(…)

CHAPTER III
CLOSURE OF THE INQUIRY
(…)

Article 283
Bill of indictment produced by the Public Prosecution Service

1 - Where enough evidence regarding the commission of a criminal offence and allowing the identification of the defendant has been gathered during the inquiry, the Public Prosecution Service has a 10-day period to produce a bill of indictment against the said defendant.

2 - Sufficient evidence is the evidence on the basis of which it is reasonable to believe that a sentence or a security measure would be imposed on the defendant should he/she face trial.

3 - The bill of indictment must contain the following information, otherwise it shall be deemed null and void:

a) The particulars of the defendant;

b) The summary of the facts causing the imposition on the defendant of a sentence or of a security measure, including, where possible, the place, time and grounds for the commission of the offence, the degree of the defendant's involvement thereon and the circumstances relevant to the determination of

the sanction to apply;

c) Reference to the applicable legal provisions;

d) A list of 20 witnesses maximum and their particulars, with specification of those witnesses – in a number not exceeding five – who are to give evidence regarding the facts mentioned in article 128(2);

e) The names of experts and technical advisors to be heard during trial and their respective particulars;

f) Reference to any other means of evidence to be produced or requested;

g) The date and signature.

4 - Should different case proceedings become one, only one bill of indictment shall be produced.

5 - The provisions set forth in article 277(3) shall apply accordingly, and the proceedings shall be continued whenever the notification procedures have proved to be ineffective.

6 - The communications referred to in the preceding paragraph are made through personal service or by registered mail, except where the defendant and the party assisting the Public Prosecutor have communicated their place of residence or professional domicile to the police or judicial authority in charge of issuing the offence report minutes or of taking their statements during either the inquiry or the preliminary judicial stage. In this case, they shall be served by standard mail pursuant to article 113(1)(c).

7 - The limit of witnesses set forth in paragraph 3, sub-paragraph d) hereinabove may be surpassed if deemed necessary for purposes of ascertaining the truth, in particular whenever an offence covered by article 215(2) has been committed or the proceedings prove to be exceptionally complex due to the number of defendants and victims involved or due to the highly organized nature of the criminal offence. In the request submitted, mention must be made to the facts about which witnesses shall testify and the reason why such witnesses have a direct knowledge of those facts.

8 – The request referred to in the preceding paragraph shall be rejected where the circumstances foreseen in article 340(4)(b)(c)(d) arise.

[Wording of Law 27/2015]

(…)

TITLE III
PRELIMINARY JUDICIAL STAGE

CHAPTER I
GENERAL PROVISIONS

Article 286
Purpose and scope of the preliminary judicial stage

1 - The purpose of the preliminary judicial stage is to have the Examining Judge confirm the decision to prosecute or to discontinue the proceedings with a view to establishing whether the case is to be tried in a higher court.

2 - The preliminary judicial stage is not compulsory.

3 - There is no preliminary judicial stage in the forms of special procedure.

[Wording of Law 48/2007]

Article 287
Application for the opening of the preliminary judicial stage

1 - The opening of the preliminary judicial stage may be requested within a 20-day period counted from the date of service of the bill of indictment or of the ruling to discontinue the proceedings:

a) By the defendant, as regards facts based upon which the Public Prosecutor submitted a bill of indictment or the party assisting the Public Prosecutor produced its accusation, where the proceedings depend upon private accusation; or

b) By the party assisting the Public Prosecutor, where the proceedings do not depend upon private accusation, as regards facts based upon which the Public Prosecutor has not submitted a bill of indictment.

2 - Although the application is not subject to special formalities, it must contain a summary of the reasons in fact and in law against the decision to prosecute or to discontinue the proceedings. It must also refer, where applicable, the pre-trial acts the applicant wishes the judge to carry out, the means of evidence that have not been considered during the inquiry stage and the facts likely to be used as evidence. The provisions of article 283(3)(b),(c) shall apply to the application submitted by the party assisting the Public Prosecutor. No more than 20 witnesses shall be considered.

3 - The application may only be refused in case it is deemed extemporaneous, where the judge lacks the necessary powers to deal with the proceedings or where the preliminary judicial stage is legally inadmissible.

4 – Through the order issued for the opening of the preliminary judicial stage, the Examining Judge appoints a counsel for the defence in case the defendant is not represented by a lawyer or a counsel.

5 - The order issued for the opening of the preliminary judicial stage is served on the Public Prosecutor, on the party assisting the Public Prosecutor, on the defendant, as well as on his/her defence counsel.

6 - The provisions set forth in article 113(13), shall apply accordingly.

[Wording of Law 20/2013]

Article 288
Direction of the preliminary judicial stage

1 - The direction of the preliminary judicial stage is incumbent on the Examining Judge assisted by the criminal police bodies.
2 - The rules regarding the powers granted to the court shall apply to the Examining Judge accordingly.

3 - Where the powers regarding the preliminary judicial stage lie upon the Supreme Court of Justice or upon a Court of Appeal, the judge shall be designated by casting vote from among the Judges of the corresponding chamber. The said judge shall be prevented from participating in the subsequent acts performed in the scope of the case.

4 - The Examining Judge investigates the case autonomously, taking into consideration the mention inserted in the application for the opening of the preliminary judicial stage to which paragraph 2 of the preceding article refers.

[Wording of Law 48/2007]

Article 289
Contents of the preliminary judicial stage

1 - The preliminary judicial stage represents a number of preliminary judicial acts that the Examining Judge intends to perform and, compulsorily, a preliminary hearing, oral and adversarial in character, during which the Public Prosecutor, the defendant and his/her defence counsel, the party assisting the Public Prosecutor and his/her lawyer may participate. However, the parties claiming compensation are not allowed to take part in this hearing.

2 - The Public Prosecutor, the defendant, his/her defence counsel, the party assisting the Public Prosecutor and his/her lawyer may be present during the preliminary judicial acts asked for by any or all of them and may ask for clarification of any issue or request that any questions they find relevant to the determination of the truth be put.

[Wording of Law 48/2007]

(…)

BOOK VII
ON TRIAL HEARINGS

TITLE I
PRELIMINARY ACTS
(...)

Article 312
Date for the main hearing

1 – Once all issues referred to in the preceding article have been settled, the presiding judge shall appoint a day, time and venue for the main hearing. The soonest possible date will be set down so that, from the time when the judicial proceedings have been received by the court to the hearing date, not more than two months have elapsed.

2 – The Court order referred to in the preceding paragraph shall also appoint another date for the main hearing to take place in case of adjournment under Article 333, paragraph 1, or for the defendant to be heard at the request of his lawyer or defence counsel appointed under Article 333, paragraph 3.

3 – Where the defendant is under remand in custody or house arrest, the date of the main hearing shall be appointed with priority over any other trial to take place.

4 – The Court should set the date for the main hearing in a way that avoids any kind of duplication with other judicial acts that must be attended by the lawyers or defence counsels. The provisions of Article 155 of the Civil Procedure Code shall apply.

[*Wording of Law 48/2007*]

Article 313
Court order setting the date for the main hearing

1 – The order setting the date for the main hearing must contain, under penalty of nullity:

a) An account of the facts and relevant legal provisions, which can be done by referring to the indictment or charge document, if any;

b) An indication of the venue, day and time for the hearing;

c) The appointment of a counsel for the defendant, if a lawyer has not yet been chosen for the proceedings; and

d) The date and signature of the presiding judge.

2 – The court order, together with a copy of the charge or indictment document, is notified to the public prosecutor, as well as to the defendant and his defence counsel, to the party assisting the public prosecutor (assistente), to the civil parties and their representatives, at least 30 days prior to the date set for the main hearing.

3 – Service of process on the defendant and on the party assisting the public prosecutor (assistente) under the preceding paragraph takes place as provided for by Article 113, paragraph 1, subparagraphs a) and b), except where they have indicated their address or workplace to the police or judicial authority that draws up the information report or hears them during the inquiry or examination stage and where they have never reported a new address by registered letter; in this case, service of process shall take place by simple postal delivery, under Article 113, paragraph 1, subparagraph c).

4 – The court order appointing the date for the main hearing cannot be appealed against.

[*Wording of Decree-Law 320-C/2000*]

(…)

Article 315
Challenge and witness list

1 – Within 20 days following service of process of the Court order appointing the date for the main hearing, the defendant may challenge that decision and provide a witness list. The provisions of Article 113, paragraph 13, shall apply.

2 – The challenge is not subject to any special formalities.

3 – Together with the list of witnesses, the defendant shall indicate the experts and technical advisers that should be summoned for the main hearing.

4 – The provisions of Article 283, paragraph 3, subparagraph d) and paragraph 7 shall apply to the witness list.

[*Wording of Law 20/2013*]

Article 316
Addition or amendment to the witness list

1 – The Public Prosecutor, the party assisting the public prosecutor (assistente), the defendant or the civil parties may amend the witness list, in particular by requesting their examination beyond the legal limit, in cases provided for by Article 283, paragraph 7, provided that others may be informed on the addition or amendment until three days prior to the date scheduled for the hearing.

2 – After submission of the list, new witnesses from outside the district cannot be proposed, unless whoever proposes them undertakes to submit them in the hearing.

3 – The provisions of the preceding paragraphs shall apply accordingly to the appointment of experts and technical advisers.

[*Wording of Decree-Law 320-C/2000*]

(…)

TITLE II
HEARING
(…)

CHAPTER II
ACTS TO BE CARRIED OUT PRIOR TO THE HEARING
(…)

Article 333
Failure to attend and trial *in absentia* as regards the defendant duly served to appear

1 - Where the defendant duly served to appear is not present at the hour fixed for the hearing to begin, the presiding judge takes the necessary and legally admissible measures in order to secure the defendant's appearance. The hearing shall not be adjourned unless the court considers that the defendant's presence since the beginning of the hearing is absolutely indispensable for the finding of the material truth.

2 - Where the court finds that the hearing may begin in the defendant's absence, or where the defendant's failure to attend is due to the reasons stated in article 117(2)(4), the hearing shall not be adjourned. Instead, the persons present thereto shall be heard pursuant to the order set forth in article 341(b)(c), notwithstanding any alteration deemed necessary to the list of witnesses previously produced. The witnesses' statements shall be recorded and the provisions of article 117(6) shall apply accordingly, where necessary.

3 - In the case referred to in the preceding paragraph, the defendant keeps his/her right to make statements until the closure of the hearing. If that takes place on the date initially fixed, the lawyer chosen by the defendant or the defence counsel appointed by the court may ask that the defendant be heard on the second date fixed by the judge pursuant to article 312(2).

4 – The provisions of the preceding paragraphs do not hinder the possibility for the hearing to take place in the defendant's absence upon his/her consent, according to article 334(2).

5 - In the case covered by paragraphs 2 and 3 above and where the hearing is to take place in the defendant's absence, the judgment handed down is served on the defendant immediately after his/her arrest or voluntary appearance. The deadline for an appeal to be lodged by the defendant is counted from the date of service of the judgement handed down.

6 – Through the service of the judgment upon the defendant, as foreseen in the preceding paragraph, the defendant is expressly informed of his/her right to appeal against the judgment, as well as of the deadline for lodging the appeal.

7 – The provisions of article 116(1)(2), of article 254 and of article 334(4)(5) shall apply accordingly.

[Wording of Law 26/2010]