The Mexican criminal process explained in English

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The practice of criminal law in Mexico has led me to serve a large number of American citizens or people who do not speak Spanish, this book is for you who must understand in a practical way what to do if you have been accused of a crime in Mexico.

This book is the annotated code of the Mexican criminal process, in which we seek to simplify the complexity of the Mexican criminal legal process for all those people who speak English and have a criminal problem in Mexico. It is very common for Americans to travel to Mexico and ignore the laws to commit an offense that is a crime in Mexico, this book is made for these people.

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Article 1. Area of application.

The provisions of this Code are of public order and of general observance throughout the Mexican Republic, for crimes that are the responsibility of federal and local jurisdictional crimes within the framework of the principles and rights enshrined in the Political Constitution of the United Mexican States. and in the International Treaties to which the Mexican State is a party.

Explanation: Everything indicated within this code is of public order, which means that it must be observed and complied with to preserve the rule of law and in particular that related to the investigation, prosecution and punishment of crimes in the Mexican Republic.

The jurisdiction encompassed by this legal system provides that all complaints filed for common order crimes as well as federal offenses, including special crimes (such as tax crimes, copyright crimes, etc.) will be carried out through the rules provided by

Article 2. Object of the Code.

The purpose of this Code is to establish the norms that must be observed in the investigation, prosecution and punishment of crimes, to clarify the facts, protect the innocent, ensure that the guilty does not go unpunished and that the damage is repaired, and so on. contribute to ensuring access to justice in the application of the law and resolve the conflict that arises due to the commission of the crime, within a framework of respect for the human rights recognized in the Constitution and in the International Treaties of which the State Mexican be part.

Explanation: The Mexican criminal procedure has the purposes indicated above and the rules and processes that must be observed for each of the points indicated above are the following:

I. Rules to be observed in the investigation: The ministerial investigation is regulated from article 212 to 252 of the mexican national code, referring to the investigation stage and the acts that can be carried out, the procedural formalities that must be attended to, as well such as acts that require prior judicial control

II. Rules on the processing and punishment of crimes: Corresponds to the criminal process, which begins from the filing of the complaint until a judgment is reached, whether acquittal or conviction, or failing that, any other police or judicial resolution that gives by the end of the investigation or criminal proceeding.

III. Ensure that the culprit does not go unpunished and that the damage is repaired: This provision is in direct agreement with what is established in article 20 of the Mexican Constitution in its letter "A", section I, that it is one of the primary objects of criminal proceedings.

The way in which the prosecutor authority must act is respecting fundamental rights, in order to ensure that their actions are not declared void or lose value and therefore, this important objective cannot be achieved.

In terms of damage reparation, it is of the utmost importance to understand that in this case the person who has the primary obligation to ensure that this is fully satisfied is the legal advisor of the victim or offended party as their representative, whether direct or indirect.

It is extremely important to resort to the general law of victims to be able to investigate and provide evidence aimed at reparation for comprehensive damage, which to date is not very often put into practice.

Article 3. Glossary.

For the purposes of this Code, as appropriate, it shall be understood as:

I. Legal adviser: The legal advisers of the victims, federal and of the Federative Entities;

Explanation: The victim advisor is in charge of ensuring that the rights of the victim are respected and promoted during the criminal process, which are listed in article 109 of this same codification, article 20, section C of the Political Constitution of the United Mexican States and other laws established in international regulations and treaties.

The primary function of victim advisors is to carry out the necessary actions, whether it is offering evidence, presenting arguments or raising exceptions or incidents in order to assert and guarantee the rights of victims and offended parties within a criminal process.

II. Code: The National Code of Criminal Procedures;

III. Council: The Council of the Federal Judiciary, the Councils of the Judiciary of the Federative Entities or the judicial body, with functions of the Council or its equivalent, which performs the functions of administration, surveillance and discipline;

IV. Constitution: The Political Constitution of the United Mexican States;

V. Defender: The federal public defender, public or ex officio defender of the federative Entities, or private defender;

Explanation: From the moment the first act of harassing a defendant is carried out, either with a summons to appear before a prosecutor authority, an arrest in

flagrancy or any other act that even partially deprives the freedom of movement of the person accused of having committed a crime is where your right to have a defense attorney who represents your interests in the process arises.

VI. Federative entities: The integral parts of the Federation referred to in article 43 of the Constitution;

VII. Control judge: The judge of the federal or common jurisdiction that intervenes from the beginning of the procedure and until the issuance of the order to open the trial, whether local or federal;

Explanation: The judge intervenes in all the procedural acts until the order to open the trial, the legal reason for what this happens is that the background investigation and test data that have been used during all the preliminary hearings are worthless. legal, and it is precisely in the oral trial hearing where the evidence will have to be evaluated by a judge who has not known the process in any of its previous stages in order to thereby be able to respect the principle of judicial impartiality.

VIII. Organic Law: The Organic Law of the Judicial Power of the Federation or the Organic Law of the Judicial Power of each Federative Entity;

IX. Public Ministry or prosecutor: The Public Ministry of the Federation or the Public Ministry of the Federative Entities;

X. Jurisdictional body: The Judge, the Trial Court or the Court of Appeal, whether of the federal or common jurisdiction;

XI. Police: Police forces specialized in the investigation of crimes of the federal or common jurisdiction, as well as the public security forces of the federal or common jurisdiction, which within the scope of their respective powers all act under the command and direction of the Public Ministry for the purposes of the investigation, in terms of the provisions of the Constitution, this Code and other applicable provisions;

XII. Prosecutor: The head of the Public Ministry of the Federation or the Public Ministry of the Federative Entities or the General Prosecutors in the Federative Entities;

XIII. Attorney General's Office: The Attorney General's Office, the Attorney General's Offices of Justice and the Attorney General's Offices of the Federative Entities;

XIV. Treaties: International Treaties to which the Mexican State is a party.

XV. Prosecution Court: The jurisdictional body of the federal or common jurisdiction made up of one or three judges, which intervenes after the order to open an oral trial, until the issuance and explanation of the sentence, and

XVI. Court of Appeal: The jurisdictional body made up of one or three magistrates, which resolves the appeal, federal or of the Federative Entities.

TITLE II: PRINCIPLES AND RIGHTS IN THE PROCEDURE

CHAPTER I: PRINCIPLES IN THE PROCEDURE

Article 4. Characteristics and guiding principles.

The criminal process will be accusatory and oral, in it the principles of publicity, contradiction, concentration, continuity and immediacy and those provided for in the Constitution, Treaties and other laws will be observed.

This Code and the applicable legislation will establish the exceptions to the aforementioned principles, in accordance with the provisions of the Constitution. At all times, the authorities must respect and protect both the dignity of the victim and the dignity of the accused.

Explanation: What this article means and reflects in practice is that there are equal conditions for the prosecutor who is the person in charge of bringing criminal action and sustaining the accusation in order to overcome the presumption of innocence that the accused enjoys constitutionally. and/or defendant, and on the other hand the defense, who will be able to present all the evidence to generate their defensive theory of the case and thereby contrast the prosecutor's theory.

In practice, it is difficult to materialize this equality between the parties, because the defense lacks experts and an unlimited budget to prove the interests of the defense to defend themselves against the accusation, and although they can access through prosecutor or judicial assistance to be able to access the resources of the prosecutor's office or judiciary experts and support to obtain public information, to mention a few, sometimes it is not possible to collect all the information necessary for these purposes.

Article 5. Advertising principle.

The hearings will be public, so that they can be accessed not only by the parties involved in the procedure but also by the general public, with the exceptions provided for in this Code. Journalists and the media may access the place where the hearing takes place in the cases and conditions determined by the Court in accordance with the provisions of the Mexican Constitution, this Code and the general agreements issued by the Council.

Explanation: the hearings at all times will give access to any person who wants to know about the matter in particular, without the need to prove any interest in it.

Likewise, the debate that may be generated in the hearing will be public, which means that any person may appear in the hearing room and witness what happens in it. This right in favor of the citizenry contributes to transparency in the performance and the work of judicial and prosecutor bodies, which have quite pronounced citizen disapproval due to incidents regularly focused on corruption issues.

Article 64 of this code establishes the cases of exception to the principle of publicity, however there are regularly cases outside of those indicated in this article where the judge decides to hold the hearing behind closed doors. These judicial criteria will help to better interpret this article:

ADVERTISING IN THE ACCUSATORY CRIMINAL SYSTEM. CASE IN WHICH AN EXCEPTIONAL RESTRICTION TO THIS PRINCIPLE IS NOT UPDATED, EVEN WHEN IN THE JUDGEMENT OF THE JUDGE IT IMPLIES A QUESTION OF "DIGNITY" OF THE VICTIM. The principle of publicity in criminal matters is recognized by the American Convention on Human Rights in its article 8, numeral 5, which establishes: "Criminal proceedings must be public, except for what is necessary to preserve the interests of justice.". That is, in accordance with the principle of publicity that governs the accusatory criminal process, the hearings will be public, so that not only the parties but also the public can access them; However, advertising may be restricted exceptionally in the cases provided for by law for reasons of national security, public safety, protection of victims, witnesses and minors, when the disclosure of legally protected data is put at risk or when the judge deems that there are well-founded reasons that justify it, as established in article 20, section B, section V, of the Political Constitution of the United Mexican States. But, in addition, the principle of publicity cannot be observed, without attending to the particular interests of the victim, because in the new Mexican criminal system the need to establish the victim as a subject with rights within the criminal process has been recognized, that is, there is an acceptance that justice requires that the rights of the victim be respected in the same way as those of the accused or accused; coupled with the purpose of the information generated by the interest of society to know the truth of the events that occurred and the vigilance that must be exercised over the authorities at the time of judging; the foregoing, as part of the judicial protection of the fundamental rights of the victim or offended party. In this sense, if the Control Judge, at the request of the Public Ministry, decided to restrict the principle of publicity, and to open the hearing of the link to the process behind closed doors, by virtue of the fact that it was a multihomicide (violent deaths), and This fact could generate irritation in society, which in the judge's opinion implied a question of "dignity" of the victim, said circumstance does not update an exceptional case that warrants the conduct of the hearing in private, since the mere fact of dealing with a violent death does not authorize the Judge to restrict the publicity of the hearing by way of "dignity" of the victim, precisely because having the principle of publicity as a purpose, to protect the parties – including the accused – translates into a right that also involves the particular rights of the victim herself and the interest of the citizen to know relevant facts, that is, it allows society to know the truth of what happened and implies that it can monitor that the authorities judge adherence to the Constitution and the law, given that publicity is part of the transparency of criminal proceedings. Therefore, the decision of the Control Judge to carry out the trial linkage hearing behind closed doors, did not imply a true analysis of the principle of publicity that entails the weighting of the interests of the indirect victims, and the purposes of the investigation itself. publicity with society, which infringes due process and affects the adequate relief of the linking audience that deserves its replacement.

Article 6. Principle of contradiction.

The parties may know, dispute or confront the evidence, as well as oppose the petitions and allegations of the other party, except as provided in this Code.

Explanation: it is one of the pillars of the adversarial accusatory system, which consists of the right of the counterparty to respond or oppose the allegations of the party that issues them, since there are no preconceived truths or irrefutable evidence.

The contradiction system is also governed by the principle of horizontal contradiction, in which you will always have the opportunity to answer the new allegation issued by the opposing party, as long as it is new information incorporated into the debate.

Article 7. Principle of continuity.

The hearings will be carried out continuously, successively and sequentially, except in the exceptional cases provided for in this Code.

Explanation: This principle has the specific purpose of giving the parties more efficient tools to make the process more agile, generating the greatest number of procedural acts in hearings that are scheduled for this purpose.

On the other hand, it should be noted that the stages of the criminal process, when concluded, cannot be reopened for the purpose of asserting rights that should have been carried out in it, since at that procedural moment the corresponding argumentation should have been made. These judicial criteria will help to better interpret this article:

PRINCIPLE OF CONTINUITY OF THE ACCUSATORY CRIMINAL PROCESS. FROM ITS INTERPRETATION THE OBLIGATION OF THE PARTIES TO MAKE VALIDATION OF THEIR DISCONFORMITIES AT THE CORRESPONDING TIME OR STAGE. The accusatory criminal procedure is divided into stages, each of which has a specific function. These stages irreversibly follow each other, which means that only after one is overcome can the next one begin, with no possibility of renewing or opening them. This reading of the accusatory penal system is based on the principle of continuity established in the first paragraph of article 20 of the Constitution. Indeed, the principle of continuity orders that the procedure be carried out to the greatest extent possible without interruptions, in such a way that the procedural acts follow each other over time. In this order of ideas, from the aforementioned principle it is clear the need for each of the stages in the criminal procedure to fully fulfill its function and, once exhausted, move on to the next one, without it being possible to return to the previous one. For this reason, it is considered that the parties in the procedure are obliged to assert their disagreements at the corresponding moment or stage.

Article 8. Principle of concentration.

The hearings will preferably take place on the same day or on consecutive days until their conclusion, under the terms provided in this Code, except for the exceptional cases established in this order. Likewise, the parties may request the accumulation of different processes in those cases provided for in this Code.

Explanation: One of the great changes in criminal matters was precisely the speed of the processes, therefore, being a branch of law in which fundamental rights are disrupted to guarantee the success of the process, such as transit, even partially or for a certain time, is that seeking a quick solution to the procedure meets one of the objectives, which is to offer prompt justice, to name a few.

Article 9. Principle of immediacy.

All hearings will take place entirely in the presence of the Court, as well as the parties that must intervene in it, with the exceptions provided for in this Code. In no case, the Court may delegate to any person the admission, relief or assessment of the evidence, nor the issuance and explanation of the respective sentence.

Explanation: The principle of immediacy is one of the great paradigms of the change of the past system (In Mexico, the accusatory system began in 2008) to the current process of adversarial and oral court.

One of the main objectives of the immediacy are the following:

I. As for the Judge: the court can assess the evidence that is presented through its senses, that is, it can see and listen to the witnesses, see how it behaves when answering the questions asked, what information it seems to be hiding and what another seems to be accentuating, all of this serves so that the judge can, based on the principle of free evaluation of the evidence indicated in numeral 359 of this codification, and only after having evaluated all that evidence and making a persuasive analysis of it. issue a decision on it.

II. As for the procedural subjects (public prosecutor and defense): This principle allows the parties to face the evidence of the counterparty and be able to verify its veracity.

In this system, it is governed by the logic of distrust, where the prosecution or the defense do not have to believe what the other party affirms, but can and should discuss the information that they intend to incorporate into the process, and only then can they be fulfilled with the purpose of the process, which is precisely to clarify the facts.

This criteria is a guide on the principle of immediacy, where the link to the process is closely linked to the formulation of the imputation, since the latter is the criminal act for which the process will be followed, it is that this makes it necessary for the same judge to be whoever witnesses both procedural acts, since it could occur on

different days due to the right of the accused to have their legal situation resolved in 72 or 144 hours, I appeal to your reading:

PRINCIPLE OF IMMEDIATION. THE CONTROL JUDGE WHO ISSUES THE ORDER OF LINK TO THE PROCESS SHOULD BE THE SAME ONE WHO KNOWN OF THE IMPUTATION AND THE REQUEST FOR LINK BY THE PUBLIC PROSECUTOR. Article 20 of the Political Constitution of the United Mexican States contemplates the principle of immediacy, which includes that all hearings will take place in the presence of the judge, without being able to delegate the relief and evaluation of the evidence to any person. Through this principle, it is intended that the judge be in permanent contact with the parties during the development of his intervention in any hearing, since said maxim does not apply only during the trial stage, but must apply in the preliminary hearings to the judgment. On the other hand, article 19 of the Federal Constitution, regulates under the new logic of the criminal process the so-called order of linking to the process, which is located in the so-called initial hearing, through which the judge establishes that there are merits to initiate a criminal proceeding against the accused, since it will state the crime charged against him, the place, time and circumstances of execution, as well as the data that establishes that an act has been committed that the law indicates as a crime and that the probability that the defendant committed it or participated in its commission. In this sense, the fact that the hearing in which the prosecutor formulated the accusation and requested the link to the process, is suspended at the request of the accused when he avails himself of the constitutional term of article 19 of the Constitution, does not justify that in its continuation it is a judge different from the one who witnessed the accusation and the exercise of motivation of the test data carried out by the prosecution, who decides the legal situation of the accused, because if through his senses the judge knew the formulation of the accusation and the test data, It would not be possible for a different judge to resolve the legal situation of the defendant, because he did not perceive out loud the actions or omissions that are attributed, the statement of the defendant -if applicable- as well as the reference or receipt of the data. of proof in charge of the social representation, because it was not in direct contact with the source from which they emanate. In addition, the circumstance that the same judge is the one who hears the accusation, the evidence and resolves the relationship, as these are closely related procedural acts, implies making decision-making transparent, to the extent that that judge will be the one Fully know the information on which the decision will be made to link or not to the process, which will reduce the risk of judicial error. Acting otherwise could disrupt the principles of continuity and concentration, since the objective is for the initial audience to have a logical sequence and be verified in the shortest possible time, so that the resolver, due to the short time elapsed, bears in mind the all the arguments of the parties and the test data, because it will be precisely these that serve to found and adequately motivate its determination.

PRINCIPLE OF IMMEDIATION AS A PROCEDURAL RULE. REQUIRES THE NECESSARY PRESENCE OF THE JUDGE IN THE DEVELOPMENT OF THE HEARING. In accusatory, adversarial and oral criminal proceedings, the

institutional mechanism that allows judges to issue their decisions is a hearing, in which the parties – face to face – verbally present their arguments, the evidence that supports their position and They also have the opportunity to orally dispute the statements of their counterpart. In accordance with this operational logic, article 20, section A, section II, of the Political Constitution of the United Mexican States in force, provides that "all hearings will take place in the presence of the judge", which implies that the principle of immediacy in This aspect seeks as objectives: to guarantee the formal correctness of the process and ensure due respect for the rights of the parties, by ensuring the presence of the judge in the judicial proceedings, as well as avoiding one of the most common practices that led to the exhaustion of the traditional criminal procedure, in which most of the hearings were not conducted by a judge, but were delegated to the secretary of the court and, in the same proportion, the presentation and evaluation of the evidence were also delegated.

Article 10. Principle of equality before the law.

All persons involved in criminal proceedings will receive the same treatment and will have the same opportunities to support the accusation or defense. Discrimination based on ethnic or national origin, gender, age, disability, social condition, health condition, religion, opinion, sexual preference, marital status or any other that violates human dignity and has the purpose of nullifying or impairing the rights will not be accepted. rights and freedoms of people.

The authorities will ensure that people in the conditions or circumstances indicated in the previous paragraph are cared for in order to guarantee equality on the basis of equity in the exercise of their rights. In the case of people with disabilities, reasonable adjustments to the procedure must be provided when required.

Explanation: The principle of equality between the parties that emanates from article 14 of the Constitution has as its purpose that the parties involved in the process at all times have the right to be able to argue their claims and promote them within any instance, be it legal, ministerial or anyone who has the quality of authority within the same process.

Procedural equality also reaches the victims and defendants or defendants, who must at all times be transparent and deliver the information to the various parties in order to comply with this principle, and with it with that of contradiction.

This thesis explains how the defendant from the moment is arrested or has been summoned to appear before the prosecutor or the judge must immediately have access to the investigation file, and thereby comply with procedural equality:

PROCEDURAL EQUALITY IN THE ACCUSATORY AND ORAL CRIMINAL PROCESS. IN ACCORDANCE WITH THIS PRINCIPLE, ONCE THE DEFENDANT IS DETAINED, IS THE OBJECT OF AN ACT OF HAZARD OR SUMMONED FOR AN INTERVIEW BY THE PUBLIC PROSECUTOR, THEY HAVE THE RIGHT TO ACCESS THE RECORDS

OF THE INVESTIGATION FOLDER, AS WELL AS TO OBTAIN COPIES THEREOF PROVIDED THAT THEY ARE NOT IN ANY OF THE CASES OF EXCEPTION THAT THE CONSTITUTION OR THE LAW ESTABLISHES. Article 218 of the National Code of Criminal Procedures establishes that in the initial investigation stage, the voice and image records, documents, objects or things that are in the folder are strictly reserved; character that they cease to have, when the accused is detained or appears to receive his interview, so that from that moment access to said records must be provided. For its part, article 219 of the code itself provides that it will be until the defendant and his counsel are summoned to the initial hearing that they will have the right to obtain a copy of the investigation records. However, article 20, sections A, section V, B, sections III, IV, VI, and C, sections I and II, of the Political Constitution of the United Mexican States, establishes the principle of equality, by guaranteeing that in criminal process, the victim and the defendant will have "procedural equality". The objective of this principle of equality was to privilege the existence of a balance between the accused and the accusing party, made up of the victim and the Public Prosecutor, since by ordering the latter to facilitate and allow the accused access to the investigation records, it gives rise to to have the opportunity to meet them and confront them (principle of contradiction), as well as to oppose the petitions and allegations of the other party, and request that they be inquire for the clarification of the facts that are imputed to him, in operation of his right of defense. In this sense, the principle of equality established by the Federal Constitution is enshrined in article 10 of the aforementioned code, stating that the parties will receive the same treatment and will have the same opportunities to sustain the accusation or defense throughout the procedure. penal. Therefore, in accordance with this principle, once the accused is in custody, is subject to an act of harassing or is summoned for an interview by the Public Ministry agent, he or she has the right to access the records of the investigation folder, as well as to obtain copies of these, either by photostatic copy or photographic or electronic record, so that they are under the same circumstances as the accusing party to support their defense during the initial investigation, provided that they are not in any of the cases of exception that the Constitution or ordinary law establishes, such as the reproduction of research records related to other people, in attention to the secrecy that must be kept from the investigation; nor will it proceed with regard to records in which there is personal information of the minor victims or in cases of crimes of violation against freedom and normal psychosexual development, family violence, kidnapping, human trafficking or when it has been judicially declared. your reservation, in accordance with article 109, section XXVI, of the aforementioned code.

This thesis helps to better understand procedural equality as a constitutional principle:

PRINCIPLE OF PROCEDURAL EQUALITY IN CRIMINAL PROCEDURE. ITS REACHES. The aforementioned principle finds support in article 20, section A, section V, of the Political Constitution of the United Mexican States, by establishing that the parties will have equality to support the accusation or defense, respectively; principle that is related, in turn, to the various equality before the law

and between the parties, provided for in articles 10 and 11 of the National Code of Criminal Procedures, respectively. However, the principle of procedural equality essentially refers to the fact that the parties will have the same rights and identical expectations, possibilities and procedural burdens, and derives, in turn, from the general rule of equality of subjects before the law, which demands the suppression of any type of discrimination based on race or ethnic group, sex, social class or political status, that is, equality among all people with respect to fundamental rights is the result of a process of gradual elimination of discrimination and, consequently, of unification of everything that had been recognizing as identical, a common nature of the human being above all differences of sex, race, religion, etc. Under these terms, the procedural parties involved in the criminal proceedings will receive the same treatment and will have the same opportunities to support the prosecution and the defense, as the case may be. Reason why, the Judges during the criminal process must undertake the actions and verify that the necessary conditions exist tending to guarantee a dignified and identical treatment to the parties on the basis of equity in the exercise of their rights provided for in the Federal Constitution. , international treaties and the laws that emanate from them, so that they cannot privilege a subject in the debate with some procedural act that provides them with an undue advantage over their opponent, because if so, the principle of merit would be violated .

Article 11. Principle of equality between the parties.

The parties are guaranteed, in conditions of equality, the full and unrestricted exercise of the rights provided for in the Constitution, the Treaties and the laws that emanate from them.

Explanation: In the same way as explained in the previous article, equality between the parties must be guaranteed to support the accusation, defense and victim theory, so the fact of observing any of these provisions will affect the rights that are disrupted. fundamental.

Article 12. Principle of prior trial and due process.

No person may be sentenced to a penalty or subjected to a security measure, except by virtue of a resolution issued by a previously established jurisdictional body, in accordance with laws issued prior to the fact, in a process substantiated impartially and with strict adherence to the human rights provided for in the Constitution, the Treaties and the laws that emanate from them.

Explanation: Complying with the essential formalities of the process guaranteed in 14 constitutional and this article are necessary for the process to have procedural health and ensure that the sentences issued have sufficient legal strength to prevent them from being dismissed on appeal or constitutional judgment.

Article 13. Principle of presumption of innocence.

Every person is presumed innocent and will be treated as such at all stages of the procedure, as long as their responsibility is not declared by means of a sentence issued by the Court, in the terms indicated in this Code.

Explanation: The human right to the presumption of innocence is established in article 20, section B, section I of the Political Constitution of the United Mexican States, which guarantees that any person accused of a crime while there is no sentence issued must be treated as innocent, not suffer the consequences that could be found established in each criminal type for those responsible for it, among others.

It is evident that under this principle there are conflicting points of view regarding whether or not there should be informal preventive detention, this constitutional provision translates into suffering in advance the effects of a probable sentence for the mere fact of having been linked to process for any of the crimes of informal preventive detention.

It concluded that the presumption of innocence becomes a principle of procedural treatment rather than a principle with material results in favor of the accused of the crime.

Article 14. Principle of prohibition of double prosecution

The person convicted, acquitted or whose process has been dismissed, may not be subjected to another criminal process for the same facts.

Explanation: The principle "non bis in dem" guaranteed in article 14 of the Constitution prohibits any person from being prosecuted twice for the same act.

Legal security is the human right that is guaranteed in this constitutional section, which must be observed by all procedural parties, and therefore promoted by them to prevent it from happening.

A very simple example is the following: A person was prosecuted for the crime of fraud of one million pesos on an event carried out in December 2020 in which he was acquitted due to insufficient evidence by the prosecutor. In this sense, the prosecutor will not be able to accuse this person again for the same criminal acts, maintaining that he already has sufficient evidence to accuse, since when trying to do so immediately, the judge must order the dismissal (dismiss the new criminal case) for be res judicata.

CHAPTER II: RIGHTS IN THE PROCEDURE

Article 15. Right to intimacy and privacy.

In all criminal proceedings, the right to privacy of any person involved in it will be respected, as well as the information that refers to private life and personal data, in the terms and with the exceptions established by the Constitution, this Code and the applicable legislation.

Explanation: In a guarantee court criminal proceeding it is extremely important that the fundamental rights of the parties are respected.

The privacy of the parties involved in a criminal proceeding range from carrying out body inspections by people of the same sex, avoiding when possible inspections of intimate parts, and in general ensuring that the due process regarding the rights of the parties is fully adequate.

The personal data of the parties are reserved for third parties unrelated to the procedure, because the legislation so provides.

Article 16. Fast justice.

Every person shall have the right to be judged within the legally established time limits. The public servants of the institutions for the procurement and administration of justice must attend to the requests of the parties promptly, without causing unjustified delays**.**

Explanation: Prompt and expeditious justice that finds its support in article 17 of the Constitution.

It should be interpreted as follows: in criminal matters there are terms with fixed terms and terms without fixed terms.

A clear example of a violation of the principle of prompt justice is at the time of concluding the complementary investigation, it often happens that at the end of the 15 days established in article 324 of the code (term for the prosecutor to rule on one of the three options indicated there), the latter does not carry out any of the actions indicated, and many times shields himself in what is indicated in article 325 of this code, that is, that the hierarchical superior warns the public prosecutor to do his job by order of the judge of control to that, is that in this case unjustified delays to the process are generated by the simple inactivity of the parties in the process, which obviously disrupts the rights of the accused, and in some cases their personal freedom, either to a greater or lesser extent measure, if you are facing a precautionary measure (which happens in most processes).

Article 17. Right to adequate and immediate legal defense and advice.

The defense is a fundamental and inalienable right that assists all defendants, however, it must always be exercised with the assistance of his defender or through him. The Ombudsman must be a law graduate or a qualified lawyer, with a professional license.

A technical defense shall be understood to be the one that must be carried out by the private Defender that the accused freely chooses or the corresponding Public Defender, to assist him from his arrest and throughout the entire procedure, without prejudice to the acts of material defense. that the defendant himself can carry out.

The victim or offended party will have the right to have a free legal adviser at any stage of the procedure, under the terms of the applicable legislation. It corresponds to the Judicial Body to ensure without preferences or inequalities for the adequate and technical defense of the accused.

Explanation: The technical defense in the case of the accused and/or defendant must be, in addition to formal, materially technical, that is, at all times there must be a defender who carries out the defensive and procedural activities necessary to guarantee the greater success of your sponsored within the process.

On the other hand, the victim legal advice, has the purpose that a lawyer other than the public prosecutor is the one who exercises the promotion of the rights of the victim and / or offended, as is known, the primary function of the prosecutor is to exercise criminal action. Therefore, under this situation, the victim advisor must at all times in his primary function assert and promote in court the rights that the victim has and thereby guarantee their maximum protection. These judicial criteria will help to better interpret this article:

ADEQUATE DEFENSE IN CRIMINAL MATTERS. THE WAY TO GUARANTEE THE EFFECTIVE EXERCISE OF THIS HUMAN RIGHT IS UPDATED WHEN THE DEFENDANT, IN ALL THE PROCEDURAL STAGES IN WHICH THEY ARE INVOLVED, HAS THE LEGAL ASSISTANCE OF AN ADVOCATE WHO IS A PROFESSIONAL IN LAW. According to the parameter of control of constitutional regularity, which derives from the reform to article 1o. of the Political Constitution of the United Mexican States, published in the Official Gazette of the Federation on June 10, 2011, which is configured by the observance and application of constitutional norms and international sources in the field of human rights, as well as the directive of interpretation pro personae; Article 20, section A, section IX, of the aforementioned constitutional order, a text prior to the reform published in the Official Gazette of the Federation on June 18, 2008, must be interpreted in harmony with numerals 8.2, subparagraphs d) and e), of the American Convention on Human Rights, and 14.3, subparagraphs b) and d), of the International Covenant on Civil and Political Rights, as well as the criteria contained in the isolated thesis P. XII/2014 (10a.) (*), issued by the Full Court of this Supreme Court of Justice of the Nation, under the heading: "ADEQUATE DEFENSE OF THE DEFENDER IN A CRIMINAL PROCEEDING. IT IS GUARANTEED WHEN PROVIDED BY A PERSON

WITH TECHNICAL KNOWLEDGE IN LAW, SUFFICIENT TO ACT DILIGENTLY IN ORDER TO PROTECT THE PROCEDURAL GUARANTEES OF THE DEFENDANT AND PREVENT HIS RIGHTS FROM BEING INJURED.", and the very doctrine of constitutional interpretation generated by this First Chamber The foregoing, in order to establish that the effective exercise and way of guaranteeing the human right to adequate defense in criminal matters implies that the accused (lato sensu), in order to guarantee that they have an adequate technical defense, must be legally assisted, in all the procedural stages in which he intervenes, by a defender who is a legal professional (private lawyer or public defender), even, if possible, from the moment his arrest occurs. justification by requiring a person who has the technical capacity to advise and appreciate what is legally convenient for the accused, in order to grant real and effective legal assistance that allows him to be able to face the accusation made against him. Which is not satisfied if the assistance is provided by any other person who does not meet the aforementioned characteristic, despite being trusted by the accused.

DEFENDER OF THE ACUSSED IN THE ACCUSATORY CRIMINAL SYSTEM. FOR HIS REMOVAL FROM POSITION, IN TERMS OF ARTICLE 121 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, DUE TO MANIFEST AND SYSTEMATIC TECHNICAL INABILITY, THE COURT MUST CAREFULLY ANALYZE EACH SPECIFIC CASE, IN ORDER TO DETERMINE WHETHER THE NUMBER AND SIGNIFICANCE OF THE ERRORS COMMITTED ARE OF SUCH A MAGNITUDE AS TO PLACE THE DEFENDANT AT RISK OF BEING DEPRIVED OF MATERIAL CONTENT HIS FUNDAMENTAL RIGHT OF ADEQUATE DEFENSE. The Plenary of the Supreme Court of Justice of the Nation, in the isolated thesis P. XII/2014 (10a.), titled and subtitled: "ADEQUATE DEFENSE OF THE DEFENDANT IN A CRIMINAL PROCEEDING. IT IS GUARANTEED WHEN PROVIDED BY A PERSON WITH KNOWLEDGE TECHNICIANS IN LAW, SUFFICIENT TO ACT DILIGENTLY IN ORDER TO PROTECT THE PROCEDURAL GUARANTEES OF THE DEFENDANT AND PREVENT HIS RIGHTS FROM BEING INJURED.", found that a formal element is identified in the proper right of defense, consisting of the appointment of a defense attorney relies on a legal professional, and a material one, which implies that the defender acts diligently in order to protect the interests of his client and prevent their rights from being harmed. However, in view of the aforementioned fundamental right, the State has an obligation of a negative nature, not to obstruct and prevent its materialization, and another of a positive nature, to ensure, through the legal means at its disposal, that the conditions that make it possible are met. exercise. Within the latter, in relation to the material element mentioned, is the power of the court provided for in article 121 of the National Code of Criminal Procedures, to remove the defender when there is a manifest and systematic technical incapacity, which in turn responds to the obligation to ensure the adequate and technical defense of the accused, established in numeral 17 of the legal system in charge of the judge; therefore, the latter may exercise the power of removal indicated, when the defender makes technical errors in a patent and clear manner, through a series of repeated behaviors in the same or similar sense. Hence, one or more isolated errors do not make up the aforementioned cause for removal, even when they reveal a certain degree of ignorance of the accusatory

criminal system, because the seriousness of the measure warrants a careful analysis in each case, so that the court determines if the number and significance of the errors committed are of such magnitude that they place the defendant at risk of having his fundamental right to adequate defense deprived of material content, depriving him of the possibility of facing the accusation made against him, and if they could transcend the meaning of the determination to be adopted in the corresponding procedural stage. Failure to act in these terms, the judge could violate the fundamental right of the accused to freely designate the defense attorney of his choice, provided for in articles 20, section B, section VIII, of the Political Constitution of the United Mexican States; 8, numeral 2, subparagraph d), of the American Convention on Human Rights, and 14, numeral 3, subsection d), of the International Covenant on Civil and Political Rights, given the factual possibility that the former can no longer appoint a second or subsequent private defender, or at the risk that the new one appointed does not have the necessary means and time to know the pertinent records, in order to determine the strategy to follow, which allows the exercise of an adequate defense.

RIGHT TO AN ADEQUATE TECHNICAL DEFENSE. THE FACT THAT THE JUDGE INVITES THE PARTIES TO BE SUBJECT TO THE PRINCIPLES AND RULES OF THE ACCUSATORY CRIMINAL PROCESS, DOES NOT TRANSLATE INTO A DETERMINATION TENDING TO QUESTION THE TECHNICAL CAPACITY OF THE DEFENDER OF THE ACCUSED, NOR DOES IT REPRESENT A PROVISION THAT PREVENTS HIM FROM APPOINTING ANOTHER. From the literal interpretation of articles 121, first paragraph, 17, first, second and last paragraphs, and 134, sections I and II, of the National Code of Criminal Procedures, the common duty of Judges to resolve matters submitted to its consideration with due diligence, within the terms provided by law, and subject to the principles that govern the jurisdictional function; determination that translates into the obligation of the judge to respect, guarantee and ensure the safeguarding of the fundamental right of the accused to an adequate technical defense in the accusatory criminal process; duty that extends to the degree of warning the accused, when the manifest and systematic technical incapacity of his defender is noticed, so that he designates a different one. However, to fulfill his duties, the judge also has the power to order the parties to abide by the principles and rules of the accusatory criminal process, which does not translate into a determination tending to question the technical capacity of the defender. that represents the defendant, much less in a provision aimed at preventing him from appointing another since, in this case, it is pertinent to show that the inability of the defender he had appointed was manifest and systematic, concepts that must be submitted to an exercise of reasonableness.

ADEQUATE DEFENSE IN ITS MATERIAL SIDE. TO DECLAR THE VIOLATION OF THIS RIGHT, IT IS NECESSARY THAT THE FAILURES OR DEFICIENCIES OF THE DEFENSE ARE NOT A CONSEQUENCE OF THE STRATEGY PROPOSED BY THE DEFENSE LAWYER. In the analysis of the trial, the judge must carefully evaluate that the failures or deficiencies in the defense are not, from any point of view, a consequence of the defensive strategy of the defense attorney, because being a law graduate is recognized with a wide margin of freedom to exercise their

functions. A defensive strategy is a plan designed and implemented by the defense in order to protect/promote the interests of the defendant, in accordance with the factual and regulatory context of the case. In this sense, it is recognized that each lawyer is autonomous in the design of the defense to follow in favor of the defendant and it is not ignored that the silence or inactivity of the defendant or his defender can be interpreted as a legitimate defense strategy, since the The right to remain silent, far from being a restriction of the right to defense or due process, constitutes a right of the defendant provided for in articles 20 of the Federal Constitution and 8, numeral 2, subparagraph g), of the American Convention on Human Rights. Humans. Therefore, the possibility for the Judge to distinguish whether he is dealing with a defense strategy, or if he is facing a violation of the defendant's rights, will necessarily depend on the context of each case. Consequently, depending on the corresponding stage and the criminal justice system under which the accused is being tried, the court must verify whether the following occurs or did occur in the criminal case: 1) absence without obvious justification of evidence; 2) inexplicable silence of the defense; 3) absence of appeals; 4) omission of advice; 5) technical ignorance of the criminal procedure of the lawyer; or, 6) absence or total abandonment of the defense. Thus, when the existence of one or more of the above conditions is verified, it would be a manifest violation of the right of adequate defense in its material aspect; Otherwise, it will be understood that the silence or inactivity of the defendant or his defense attorney attends to a legitimate defense strategy

ADEQUATE DEFENSE IN ITS MATERIAL SIDE. THE COURTS SHOULD TAKE MEASURES TO GUARANTEE THAT THE DEFENSE LAWYER HAS THE NECESSARY KNOWLEDGE AND ABILITY TO DEFEND THE ACCUSED. Of articles 20, section A, section IX, of the Political Constitution of the United Mexican States, in its text prior to the reform published in the Official Gazette of the Federation on June 18, 2008 (current article 20, section B, fraction VIII) and 8, numeral 2, of the American Convention on Human Rights, derives that all defendants in a criminal proceeding have the right to enjoy an adequate defense, which has two aspects: 1) the formal one, which consists in not preventing the defendant from exercising that right; and, 2) the material, which is constrained to adequate assistance through the defender. Therefore, the corresponding jurisdictional bodies must take measures to guarantee that the defense lawyer has the necessary knowledge and capacity to avoid the violation of the aforementioned right to the detriment of the defendant. That is, when the breach of the duties of the lawyer within the criminal procedure is manifest or evident, the Judge is obliged, in his capacity as rector and guarantor of the criminal process, to evaluate the defense provided to the accused, otherwise, he would lack meaning that the material defense is part of the human right to adequate defense, if within the criminal procedure there is no control mechanism that allows the accused to minimally guarantee that his lawyer has the necessary aptitude to defend him adequately. Thus, the criminal judges must monitor the actions of the defender, in order to avoid the violation of that right to the detriment of the defendant, without the mere appointment of a lawyer in law being enough to protect, since its observance requires that the accused be provided with a real and operative assistance, regardless of whether the defense

fell to a public defender or an individual, otherwise, a differentiation would be made that does not find support in the Federal Constitution or in the American Convention on Human Rights.

ADEQUATE DEFENSE IN ITS MATERIAL SIDE. GUIDELINES TO FOLLOW TO EVALUATE WHETHER THIS RIGHT HAS BEEN VIOLATED. Given that the court during criminal proceedings is obliged to ensure that the right to enjoy an adequate defense does not become illusory through inadequate legal assistance, it is appropriate that the judges evaluate the defense provided by the lawyer . Due to the foregoing, this First Chamber of the Supreme Court of Justice of the Nation considers that to determine if the aforementioned right in its material aspect was violated, given that not every deficiency or error in the conduct of the defense implies said violation, the judge must follow the following guidelines: a) analyze that the alleged deficiencies are beyond the control of the accused and correspond to the incompetence or negligence of the defender and not to an intention of the accused to hinder or unduly evade the process; b) evaluate that the defense's failures are not a consequence of the lawyer's defensive strategy, assessing the issues of fact rather than substance to focus mainly on the lawyer's attitude towards the criminal process; and, c) assess whether the lack of defense affected, in the sense of the ruling, to the detriment of the accused, taking into consideration case by case when assessing the trial as a whole. However, if after carrying out this evaluation task the Judge determines that any of the aforementioned failures resulted in the violation of the defendant's right to have an adequate defense in its material aspect, he will have the obligation to inform him of this circumstance in order to grant him the possibility of deciding if he wants to change his lawyer, whether he appoints a private one, is assigned one ex officio, or continues with his same defender; If he chooses to change his lawyer, the Judge must grant sufficient time to prepare his defense again and be able to correct the failures or deficiencies of the previous defense. On the other hand, if you decide to keep your private defender, the Judge will appoint a public defender to collaborate in the defense and to prevent your rights from being violated.

ADEQUATE DEFENSE IN ITS MATERIAL SIDE. THIS RIGHT IS NOT SATISFIED WITH THE SOLE APPOINTMENT OF A LAW GRADUATE TO DEFEND THE ACCUSED, BUT THE NECESSARY MEASURES MUST BE IMPLEMENTED TO GUARANTEE THAT THEY HAVE THE ASSISTANCE OF A TRAINED PERSON TO DEFEND THEM [PARTIAL ABANDONMENT OF JURISPRUDENCE 1a./J . 12/2012 (9th)]. The First Chamber of the Supreme Court of Justice of the Nation, in the aforementioned jurisprudence of the heading: "ADEQUATE DEFENSE. WAY IN WHICH THE JUDGE OF THE CASE GUARANTEES ITS VALIDITY.", held that the right of adequate defense is essentially guaranteed if the defendant is assisted by a defense attorney and the work of the defense is not hindered in any way. In the same way, it established that the aforementioned right should not reach certain extremes, among them: a) monitor the defense strategy; b) appraise the technical capacity or incapacity of the defense attorney; and, c) that the breach of the duties of the defense must be evaluated by the judge, but in any case could be a matter of professional responsibility. However, the harmonization of the

constitutional doctrine of the High Court with the jurisprudence of the Inter-American Court of Human Rights, and a new reflection on the subject, lead this First Chamber to partly separate from the criterion embodied in the aforementioned thesis, specifically in what referring to the considerations indicated in subparagraphs b) and c), because it is recognized that part of the essential core of the right to enjoy an adequate defense is the compliance that it complies with its material aspect, that is, that the lawyer satisfies a minimum standard of diligence in the fulfillment of their duties, which must also be controlled by the Judge in his capacity as guarantor and rector of the criminal procedure. This, because a true adequate defense cannot be limited to mere procedural or procedural aspects, since the mere appointment of a law graduate to assume the defense does not satisfy or make effective, by itself, the right to enjoy a material defense, Rather, it requires that all necessary measures be implemented to ensure that the accused has the assistance of a person trained to defend him. However, once this minimum standard has been met, the Judge must refrain from controlling the goodness and effectiveness of the adopted defensive strategy or its result, by virtue of the autonomy in its design by the appointed defender.

Article 18. Guarantee of being informed of your rights.

All the authorities that intervene in the initial acts of the procedure must ensure that both the accused and the victim or offended know the rights recognized at that procedural moment by the Constitution, the Treaties and the laws that emanate from them, in the terms established in this Code.

Explanation: Both the arresting police officers, the prosecutor of the public prosecutor's office, as well as the judge or the defender of the accused have the obligation to keep the parties informed at all times of the rights of each of the acts and proceedings carried out during the investigation stage. deformalized, as well as criminal proceedings, thereby guaranteeing the right of access to justice.

For example, if you are detained after having run over a person, after the auxiliary bodies verify the health of the person run over and guarantee their health, it is that the arresting police officers must inform the detainee at that moment of all his rights that he has for the purposes of that the detainee has an idea of precisely how to start defending himself, all these rights are expressed in detail in article 113 of the national code of criminal procedures.

Subsequently, when the detainee is transferred to other authorities and is made available to them, it is that the authority must once again ensure that the detainee knows his rights in detail.

Article 19. Right to respect for personal liberty.

Every person has the right to have their personal liberty respected, for which reason no one may be deprived of it, except by virtue of an order issued by the judicial authority or in accordance with the other causes and conditions authorized by the Constitution and this Code.

The judicial authority may only authorize as precautionary measures, or precautionary measures restricting freedom, those that are established in this Code and in special laws. Pretrial detention will be of an exceptional nature and its application will be governed by the terms provided in this Code.

Explanation: No one can be deprived of their possessions except by resolution, this principle comes from the Mexican constitution in number 16, which is of the utmost importance to grant legal security to all citizens.

Based on the principle of legal certainty, the legislator established a limitation to the court in the sense of only being able to decree precautionary measures and orders if these are indicated in the procedural legislation.

On the other hand, preventive detention, being the most damaging of the Mexican criminal legal system, is that it should be used as little as possible, only obviously when other precautionary measures cannot guarantee that the purposes of the process are met. Finally, this rule establishes an exception, which occurs in cases of crimes in which preventive detention is imposed unofficially, obviously where this rule is not applicable.

TITLE III: COMPETENCE

CHAPTER I: GENERAL

Article 20. Competition rules.

To determine the territorial jurisdiction of the federal or local jurisdictional bodies, as appropriate, the following rules shall be observed:

I. The jurisdictional bodies of the common jurisdiction will have jurisdiction over punishable acts committed within the judicial circumscription in which they exercise their functions,

in accordance with the distribution and provisions established by its Organic Law, or failing that, in accordance with the agreements issued by the Council;

Explanation: By reason of jurisdiction, the courts of the state judicial power in criminal matters will be competent to be able to hear criminal proceedings committed in the state where they are part.

Likewise, the organic laws of the judicial instances establish that judicial headquarters will hear matters committed within their state, which is regularly divided into municipalities, or in headquarters established in cities or distant towns.

II. When the punishable act is of the federal order, they will know the federal jurisdictional bodies;

Explanation: The federal jurisdictional bodies will hear the following crimes:

Those established in the federal criminal code, as well as all other special laws that contain crimes within them and when the power of attraction is exercised.

The federal criminal courts are divided territorially by constituency according to the organic law of the federal judicial power, so this is how they will be known, based on this geographical division.

III. When the punishable act is of the federal order but there is concurrent jurisdiction, they must know the jurisdictional bodies of the common jurisdiction, in the terms provided by law;

Explanation: When there are crimes that establish laws of the common order and of the federal order, the court of the common order must know.

In each case it will be necessary to analyze the procedural nature of each type of crime.

IV. In case of concurrence of crimes, the Public Prosecutor's Office of the Federation may hear common law crimes that are related to federal crimes when it deems appropriate, likewise the federal jurisdictional bodies, where appropriate, will have jurisdiction to judge them. For the application of sanctions and security measures in crimes of common jurisdiction, the legislation of their jurisdiction of origin will be followed. As long as the Federation does not exercise said power, the state authorities will be obliged to assume their competence in terms of the first fraction of this article;

Explanation: The federal public prosecutor's office is given the right and authority to be able to investigate and, where appropriate, bring criminal action when, for reasons of concurrence of crimes, one or more of the crimes belongs to the common jurisdiction. In the event that the federal investigative authority does not exercise said power through the corresponding procedures, the public prosecutor's office of the common jurisdiction will have to continue hearing the crimes of the common jurisdiction.

V. When the punishable act has been committed within the limits of two judicial circumscriptions, the jurisdictional body of the common or federal jurisdiction, as the case may be, that has prevented in the knowledge of the cause will be competent;

Explanation: In this section, indicate the code that will be known by whoever has carried out the first act or has issued the first jurisdictional resolution.

It is evident that this article lacks a legislative technique since it is unclear and lends itself to different interpretations, why would it be necessary to go to the normative material to verify what should be understood by limits and from that subjective interpretation to verify if the court that is be within that set limit.

IV. When the place of commission of the punishable act is unknown, the jurisdictional body of the common or federal jurisdiction, as the case may be, of the judicial circumscription within whose territory the accused has been arrested, shall have jurisdiction, unless the jurisdictional body has prevented the judicial district where you reside. If, later, the place of commission of the punishable act is discovered, the case will continue with the Court of this last place;

Explanation: At this point the competition is divided as follows:

a) If the place of commission of the illegal act is unknown, the court where the accused was arrested will know; unless you have known the court of the place where the accused resides and;

b) If during the criminal process, the proceedings reveal the place where the crime was committed and, in addition, it is a different circumscription from the body that is hearing, this must declare itself incompetent and send the records to the court of the place where the crime was committed.

VII. When the punishable act has begun its execution in one place and consummated in another, the knowledge will correspond to the Court of either of the two places, and

Explanation: At this point, the knowledge of the criminal process may be carried out in any circumscription, where, as already mentioned, it deals with the case of continued crime.

VIII. When the punishable act has begun its execution or is committed in foreign territory and continues to be committed or produces its effects in national territory, in terms of the applicable legislation, it will be the responsibility of the Federal Court.

Explanation: In this fraction there is no greater complexity due to jurisdiction, since in both cases the jurisdiction will be of the federal courts.

These judicial criteria will help to better interpret this article:

TERRITORIAL COMPETENCE BY EXCEPTION FOR REASONS OF SECURITY IN PRISONS. IT IS THE CORRESPONDENCE OF THE JUDGE OF THE PLACE WHERE THE MAXIMUM-SECURITY CENTER IS LOCATED TO WHICH THE DEFENDANT HAS BEEN TRANSFERRED AND OF THE CLAIMING JUDGE TO PROVIDE WHAT IS NECESSARY FOR SENDING THE RECORDS OF THE DIGITAL FOLDER THAT WAS PROCESSED BEFORE HIM AND THOSE OF THE FOLDER. OF INVESTIGATION (EXTENSIVE INTERPRETATION OF ARTICLE 27 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES). Pursuant to article 22 of the National Code of Criminal Procedures, the territorial jurisdiction of exception for security reasons corresponds to the Judge of the place where the maximum-security center to which the accused is transferred is located. For its part, article 27 of this law states that incompetence due to pleas may be promoted at any stage of the procedure, except for the exceptions provided.

in the code itself, and the body that recognizes its incompetence will send the corresponding records to the one it considers competent and, where appropriate, will also make the accused available to them; and in its last paragraph it establishes that the declination cannot be promoted in the foreseen cases of competition due to security. However, if by instructions of the commissioner of the Decentralized Administrative Body Prevention and Social Rehabilitation the accused was transferred to another detention center, by virtue of the fact that the one in which he was found did not comply with the adequate security measures and systems for the permanence of the people who are involved in the commission of crimes of high social impact, with a high risk to society and with great capacity for planning and execution, which was made known to the Control Judge, who considered the hypothesis of article 22 referred to updated. and urged the Superior Court of Justice of the State so that the competent court in turn continue with the corresponding stage of the criminal case and, in principle, the local Judge of the place of the detention center admitted the jurisdiction to hear the case for safety reasons; However, in a subsequent order, it considers that it cannot conduct the intermediate hearing within the legal term, because the State Attorney General's Office had not received the investigation folder and declines its jurisdiction in favor of the control judge and criminal oral trial of the place where he was once the accused has been detained, so as not to violate his procedural rights, then, the

competent body to hear this type of special jurisdiction is the one in the place where the detention center to which the accused was transferred for security reasons is located, since he cannot decline it for various reasons if he had already admitted it, that is, the lack of receipt of the investigation file by the State Prosecutor's Office, has nothing to do with the question of competence, since it is not a piece of information that affects the general and exception rules to set it, provided for in articles 20 and 22 of the aforementioned code; especially that the territorial jurisdiction of exception for security reasons cannot be declined by the Judge who exercises jurisdiction in the place where the accused is being held, because there is an express prohibition to do so, established in the last paragraph of article 27 invoked, this while the reasons for which said competence was established subsist. Likewise, this precept says nothing, expressly, regarding the records of the investigation folder that supports or constitutes the origin of the criminal case, which the judge does not have in his possession because he is in charge of the Public Ministry, who has the quality of party within the criminal case and is responsible for conducting the investigation, ordering the pertinent and useful steps to demonstrate, or not, the existence of the crime and the responsibility of the person who committed it or participated in its commission, as well as complying with other procedural obligations ; Therefore, from an extensive interpretation of that normative portion, it can be inferred that the Judge who declares himself incompetent must provide what is necessary so that not only the records of the digital folder that was processed before him are sent, but also those of the folder of investigation, for which it must require the agent of the Public Prosecutor's Office to send the latter to the State Attorney General's Office where the body that has been found to have jurisdiction exercises jurisdiction, so that it can turn it over to the corresponding social representative to intervene as a party within the criminal case, so that the criminal procedure can continue and that its process is not left in insecurity or legal uncertainty and, with it, the governed who is subject to the criminal investigation, especially since said collaboration is allowed in terms of article 74 of the aforementioned code, with the understanding that, where appropriate, the lack of the agreement indicated therein is inconsequential, since the moment when the law should be applied or not to be applied cannot be left to the whim of the federal entities. the continuation of the criminal procedure.

LACK OF COMPETENCE DUE TO DECLINE OF THE CONTROL JUDGE BY REASON OF TERRITORY. IT IS IMPROPER IF IT IS BASED ON EVIDENCE DATA, ALLEGEDLY SUPERVENIENT, COLLECTED OUTSIDE OF THE SUPPLEMENTARY INVESTIGATION AND DURING THE WRITTEN PHASE OF THE INTERMEDIATE STAGE, WHICH VARY THE CRIMINAL ACT AS TO THE PLACE OF ITS COMMISSION. In accordance with Articles 20, section I, 307, 311, 316, last paragraph, 317, section III and 318 of the National Code of Criminal Procedures, in the case of a conflict of jurisdiction between courts of common law, the judge of the place where according to the imputation will be competent. and connection to the process, the fact that the law indicates as a crime has been committed. In this context, if in a later stage, such as the intermediate stage in its written phase, data arise that could eventually affect the variation of certain factual circumstances of

the criminal act established in the order linking the process, for example, the place where it was committed or consummated, this does not translate into the legal permission for the Control Judge to decline jurisdiction based on territory, since this would be an inopportune legal opinion, while as a procedural budget of public order, jurisdiction is arises from the legal classification of the fact, with the test data subject to horizontal control in procedural equality between the parties, so that the consequence that other supervening data could have on the case, corresponds to the merits of the case. the questions raised regarding the criminal act that, if applicable, will have to be elucidated at another stage, but could not generate, by their mere issuance, the territorial incompetence of the Judge.

COMPETENCE TO KNOW THE RATIFICATION OF THE INVESTIGATION TECHNIQUE RELATING TO THE GEOGRAPHICAL LOCATION IN REAL TIME OF MOBILE COMMUNICATION EQUIPMENT ASSOCIATED WITH TELEPHONE LINES, ORDERED BY THE PUBLIC MINISTRY, IN TERMS OF ARTICLE 303, SEVENTH PARAGRAPH, OF THE NATIONAL PROCEDURAL PROCEDURAL CODE . IT CORRESPONDES TO THE CONTROL JUDGE OF THE SUBJECT AND TERRITORIAL CIRCUMSCRIPTIONS IN WHICH THE INVESTIGATED EVENTS OCCURRED. Article 16, fourteenth paragraph, of the Political Constitution of the United Mexican States authorizes the Judges of control of the Judicial Powers (of the Federation and of the federal entities), to resolve by any means, among others, the techniques of investigation of the authority that require judicial control, with the precision that the authorized interventions (in general, any of them) will adjust to the legal requirements and limits. Thus, in accordance with articles 20 and 303, seventh paragraph, of the National Code of Criminal Procedures, when investigation acts are related in which the physical integrity or life of a person is in danger, or the object of the investigation is at risk. crime, as well as in acts related to the illegal deprivation of liberty, kidnapping, extortion or organized crime, the prosecutor or public servant to whom that power is delegated, under his strictest responsibility, will directly order the geographic location in real time of mobile communication equipment associated with telephone lines and, after compliance, within a period of forty-eight hours, the Public Prosecutor's Office must inform the Control Judge to guarantee its authenticity, in order to partially or totally ratify the subsistence of the measure immediately, without prejudice to the social representative continuing with his actions. Therefore, in accordance with the punishable acts, the competence to hear the ratification of this investigative technique corresponds to the Judge of control of the matter and territorial circumscription in which these acts occurred, that is, to the respective federal or local court. within the scope of its jurisdiction.

Article 21. Faculty of attraction of crimes committed against freedom of expression.

In cases of common law crimes committed against any journalist, person or facility, which intentionally affect, limit or undermine the right to information or freedom of expression or printing, the Federal Public Ministry may exercise the power of attraction to know and

prosecute them, and the federal jurisdictional bodies will also have jurisdiction to judge them. This power will be exercised when any of the following circumstances occurs:

I. There are indications that a public servant of state or municipal orders has participated in the act constituting a crime;

Explanation: In order to exercise the power of attraction, both circumstances must be incurred at all times, firstly that the crime has been committed against a person who performs communication tasks and that one of the fractions established in this article is updated.

At this point it must be updated that the active subject of the crime has been committed by a public servant of any of the levels of government.

II. In the complaint or complaint or other equivalent requirement, the victim or offended party has indicated as a probable author or participant a public servant of state or municipal orders;

III. In the case of serious crimes thus qualified by this Code and applicable legislation for informal preventive detention;

Explanation: in order to exercise the power of attraction in this case, the crime reported must be one of those considered informal pretrial detention, which are listed in article 167 sixth paragraph of the national code of criminal procedures.

IV. The life or physical integrity of the victim or offended is in real risk;

V. It is requested by the competent authority of the federative Entity in question;

VI. The acts constituting a crime have a significant impact on the exercise of the right to information or freedom of expression or the press;

Explanation: This fraction is interpretive, since in order to conceptualize the phrase "impact in a transcendental way on the exercise of the right to information" it is important that the public prosecutor of the federation make an objective assessment and come to the conclusion that it is necessary to make use of said power.

VII. In the Federal Entity in which the act constituting a crime was carried out or its results were manifested, there are objective and generalized risk circumstances for the exercise of the right to information or freedom of expression or printing;

Explanation: In this fraction, what is important transcends the statistics of attacks against the press that have been carried out prior to the crime committed, where, based on that information, the power of attraction can be carried out.

VIII. The fact constituting a crime transcends the scope of one or more federative Entities, or

Explanation: In the same way, in this section, the significance will be assessed by the federal public ministry, where the crime exceeds the borders of the federal entity in terms of social and media impact and other circumstances considered of significance valued by the court.

IX. By judgment or resolution of a body provided for in any Treaty, the international responsibility of the Mexican State has been determined for defect or omission in the investigation, prosecution or prosecution of crimes against journalists, persons or installations that affect, limit or undermine the right to information or freedom of expression or the press.

In any of the above cases, the victim or offended may request the Federal Public Ministry to exercise the power of attraction.

Explanation: the power is granted to the victim so that they can request the power of attraction in the event of any of the following circumstances.

Article 22. Competition for security reasons.

A jurisdictional body other than the place where the crime was committed, or the one that is competent by reason of the aforementioned rules, will be competent to hear a matter, when taking into account the characteristics of the fact investigated, for reasons of security in prisons or by others that prevent guaranteeing the adequate development of the process.

The foregoing is equally applicable to cases in which, for the same reasons, the judicial authority, at the request of a party, deems it necessary to transfer an accused to a maximum security detention center, in which the jurisdictional body of the place where the the center is located.

In order for those prosecuted for federal crimes to be able to comply with their precautionary measure in the penitentiary centers closest to the place where their procedure is carried out, the federal entities must agree to enter the local penitentiary centers in order to carry out their due process, except for the rule provided in the previous paragraph and in cases where special security measures not available in said centers are applicable.

Explanation: as an exception rule, for security reasons, you can know a different one than the one that corresponds based on the organic laws of the judicial power, provided that the active subject is in prison and that they do not have the necessary measures to be able to comply with their penance obligations.

It is evident that this article is focused due to the defendants who must be admitted to maximum security centers, either because of the social impact of the crime committed or because of the dangerousness of the assets of the crime.

Finally, it must be ensured that those prosecuted for federal crimes serve their sentence in a rehabilitation center close to their place of residence as well as the place where their relatives are, in order to respect their fundamental rights.

Article 23. Auxiliary competition.

When the Public Prosecutor's Office or the Jurisdictional Body acts in aid of another jurisdiction in the practice of urgent proceedings, it must resolve in accordance with the provisions of this Code.

Article 24. Judicial authorization for urgent proceedings.

The Control Judge who is competent to know the acts or any other measure that requires prior judicial control, will rule on the matter during the corresponding procedure; however, when these actions should be carried out outside of its jurisdiction and in the case of proceedings that require urgent attention, the Public Prosecutor's Office may request the authorization directly from the competent Control Judge in that place; In this case, once the procedure has been carried out, the Public Ministry will inform the competent Control Judge in the corresponding procedure.

Explanation: Exceptionally, the Public Prosecutor's Office, if so requested by the needs of the process, may request judicial control before an incompetent judge to carry out actions that, due to their nature, have had a need to vent outside the competent jurisdiction. .

Explanation: As an example, the fact that there is a person investigated who is in another state and there is a need to extract fluids, in case of refusal, would arise the need to request judicial assistance for the purpose of resolving what is relevant.

CHAPTER II: INCOMPETENCE

Article 25. Types or forms of incompetence.

The incompetence can be decreed by declinatory or by inhibitory.

The party that opts for one of these means may not abandon it and resort to the other, nor may they use them simultaneously or successively, and must be subject to the result of the one chosen.

The incompetence will proceed at the request of the Public Prosecutor, the accused or his Advocate, the victim or offended or his Legal Adviser and will be resolved in hearing with the formalities provided for in this Code.

Explanation: From the moment the procedural act consisting of carrying out the corresponding promotion in terms of inhibition or declination has been carried out, therefore the possibility of promoting the one that has not been promoted, or carrying it out simultaneously, is extinguished. These judicial criteria will help to better interpret this article:

LACK OF COMPETENCE DUE TO DECLINE IN THE ACCUSATORY CRIMINAL SYSTEM. OPEN THE INITIAL HEARING, THE CONTROL JUDGE CANNOT APPEAR WITHOUT FIRST RESOLVING THE LEGAL SITUATION OF THE DEFENDANT. Pursuant to article 21, first and second paragraphs, of the Political Constitution of the United Mexican States, in relation to articles 311 and 316, penultimate paragraph, of the National Code of Criminal Procedures, once the Public Prosecutor initiates the exercise of the action criminal, prosecutes the investigation folder, raises the jurisdiction and formulates an accusation against the defendant regarding an act provided for in the law as a crime, the control Judge is constrained to resolve the legal situation of the latter and only after verifying the above, may he rule, if he considers it so, on his legal incompetence to continue hearing the matter. The foregoing is so, because when the defendant is already available to the control judge and the initial hearing is underway, it must be carried out and concluded in terms of the applicable constitutional and legal provisions, without said term being able to be suspended under the pretext of the incompetence of the judge before whom the accusation was formulated, since this question does not constitute an impediment to the control judge to resolve the legal situation of the accused; especially that in accordance with article 29 of the code itself, prior to determining any matter of incompetence -by declining or inhibiting-, issues that do not admit delay must be practiced and, where appropriate, resolved, among which is the link to process.

Article 26. Rules of incompetence.

For the decision of incompetence the following rules will be observed:

Those that arise between jurisdictional bodies of the Federation will be decided in favor of the one that has prevented, in accordance with the rules provided in this Code and in the Organic Law of the Judicial Power of the Federation and if there are two or more competent, in favor of the one that have prevented;

Those that arise between the jurisdictional bodies of the same federative Entity will be decided in accordance with the rules provided for in this Code and in the applicable Organic Law, and if there are two or more competent bodies in favor of the one that has warned, or

Those that arise between the Federation and one or more federative Entities or between two or more federative Entities among themselves, will be decided by the Federal Judicial Power in the terms of its Organic Law.

The jurisdictional Body that is competent may confirm, modify, revoke, or, where appropriate, replace at its discretion and responsibility, any type of procedural act that it deems pertinent in accordance with the provisions of this Code.

Once the incompetence has been resolved, the accused, where appropriate, will be immediately made available to the competent Court, as well as the records held by the incompetent Court.

Explanation:

In the event that any of the parties or the court itself promotes incompetence to hear a matter, it must be resolved under the rules established in article 20 of the Constitution.

As a general rule, both federal and common law judicial districts divide their range of jurisdiction based on the territorial limit of their municipalities, however, the case may arise where the punishable act has occurred within territorial limits where each one has jurisdiction. of the judicial districts, in this case, the judicial district that was warned in the first place will know about the criminal process.

In this case, it is necessary to go directly to what is established in the respective organic law.

There may be a scenario where a procedural act could have been carried out in a judicial district where the procedural acts or resolutions will be carried out in accordance with procedural legislation other than what is established in this code or vice versa, for this case the competent court is granted discretion to be able to generate actions for the purpose of replacing or confirming procedural acts.

Finally, once these points are resolved, the accused will be made available to the competent judicial body.

These judicial criteria will help to better interpret this article:

ACCUSATORY AND ORAL PROCEDURAL SYSTEM IN THE STATE OF TABASCO. APPLICATION SHOULD BE GOVERNED, FOR PURPOSES OF DETERMINING THE COMPETENT BODY, WHEN THE MAIN ACTS OF INVESTIGATION ON THE CRIMINAL ACTS WERE DEVELOPED ACCORDING TO THIS PROSECUTION SCHEME. Through constitutional reforms of June 18, 2008 and October 8, 2013, as well as with the publication in the Official Gazette of the Federation of the National Code of Criminal Procedures, on March 5, 2014, the Federal Legislative Power implemented and regulated homogeneously in our country the new scheme of accusatory and oral prosecution, in accordance with a principle of gradual application that each State would determine through the respective declaration issued for that purpose, provided that this did not exceed June 18, 2016; and, furthermore, based on various transitory rules, for example, the one that establishes that only trials initiated under the rules of the traditional system should be concluded in accordance with these last provisions. In this sense, the Congress of the State of Tabasco, by decree number 119, published in the Official Gazette of the entity on August 5, 2014, issued the corresponding declaration of incorporation into its legal regime of the aforementioned national code, likewise, in a manner gradual and attentive to a system of regions, from which it is observed that while on October 6 of that same year, the new accusatory system entered into force in the Municipality of Teapa, in localities such as Nacajuca it began its validity until August 24, 2015. However, in the event that the technical investigation body had knowledge of a criminal event due to the discovery of the body of the victim within the jurisdiction of the Municipality of Teapa, specifically, after August 5, 2014 and, for this reason, once the investigation has been carried out, it is in accordance with the rules and standard of proof that govern the accusatory system and, in particular, this scenario would have triggered the materialization of the main and immediate acts of investigation, for example, the removal of the corpse, multiple expert tests interviews with the family and friends of the victim, the seizure of the vehicle of the possible perpetrator of the crime, as well as the execution of the corresponding search warrant from which various test data were obtained, the Judge who must hear the matter is one specialized in that system; this, despite the fact that the Public Prosecutor's Office, prior to finalizing the respective formalized investigation, had declared its legal incompetence in favor of another with residence in Nacajuca, when the latter still governed its actions in accordance with the procedural rules of the mixed system (before December 24). August 2015), arguing that, in his opinion, the moment of the deprivation of life of the passive occurred in this different locality outside the aforementioned place of discovery and that this circumstance would have led to the second of those indicated would have consigned the aforementioned events before a resolver of the traditional scheme. The foregoing, because the transitory rules of the indicated reforms exclude the application of the criminal adjective legislation that it repeals and, on the contrary, they focus on the prevalence of the National Code of Criminal Procedures; from which it is concluded that, likewise, the concretion of the previous system should be rejected in those cases in which fundamental investigation acts of the criminal act (homicide) responded to the procedural logic of the new accusatory scheme, since, given this scenario, it would be a It is

contradictory that a matter in which the majority was developed according to a specific (adversarial) procedural system, is intended to be redirected to another scheme of a very diverse nature and which, furthermore, is currently formally repealed; especially that, on the one hand, the oral Judge will be in a position to validate, where appropriate, the evidence carried out, as a preliminary investigation, in accordance with the fifth transitory article and 26, penultimate paragraph, of the National Code of Procedures Criminal, and based on the isolated thesis 1a. XLVI/2017 (10a.), of the First Chamber of the Supreme Court of Justice of the Nation and, on the other, the subsistence of the new regulatory framework is accentuated, when the only objectively established thing is that the body of the victim was found in a place where said accusatory and oral system governed.

ACCUSATORY AND ORAL CRIMINAL PROCESS. ONCE THE INVESTIGATION BEGINS IN ACCORDANCE WITH THE REFERRED SYSTEM, THE JURISDICTION BY REASON OF JURISDICTION BETWEEN A CONTROL JUDGE OF THE STATE OF MEXICO AND A DISTRICT JUDGE OF FEDERAL CRIMINAL PROCESSES, IS STATED IN FAVOR OF A FEDERAL JUDGE SPECIALIZED IN SAID PROCESS [ABANDONMENT OF THE THESIS 1a. CLXX/2016 (10a.)]. This First Chamber of the Supreme Court of Justice of the Nation, in the isolated thesis 1a. CLXX/2016 (10a.),(1) held that when a judge of the mixed criminal system is competent to hear a matter in which a judge belonging to the accusatory and oral criminal procedure system determined to issue an order linking the process and declined jurisdiction to hear it, it must nullify said determination and send the records to the investigating Federal Public Prosecutor's Office so that it decides on the integration of the preliminary investigation and, if it deems it appropriate, exercises criminal action, for the processing of the criminal process. respective. This First Chamber deviates from said criterion, having issued it when the federal accusatory and oral criminal system had not yet entered into force throughout the national territory, particularly in the State of Mexico. Indeed, of the interpretation of the fourth and third transitory articles corresponding to the constitutional reforms published on June 18, 2008 and October 8, 2013, in the Official Gazette of the Federation, respectively, as well as the third and transitory fifth of the National Code of Penal Procedures, it is concluded that if begins the investigation for facts possibly constituting a crime in accordance with the legislation of the State of Mexico that provides for the accusatory and oral criminal procedural system, and when the order of connection to the process is issued, it is determined that jurisdiction is provided by reason of jurisdiction in favor of a district judge, then the competition is supplied in favor of the latter to continue the investigation of the procedure with support in the accusatory criminal procedure system provided for in the aforementioned code. Indeed, from the aforementioned constitutional precepts, it is noted that the Constitutional Reform Power ordered that criminal proceedings initiated prior to the entry into force of the new accusatory criminal procedure system will be concluded in light of the provisions in force prior to said act. . Hence, if the criminal procedure was regulated in any of its procedural stages by the mixed or traditional criminal procedural system, then the latter must be applied, which does not necessarily happen otherwise because, in principle, it is a contradiction that the same cause Criminal law, which has only been investigated

under a procedural system, is regulated, at the same time, by another system of a very diverse nature, which, moreover, has been formally repealed. Consequently, if the investigation began with the accusatory and oral criminal process in the local jurisdiction, the Federal Code of Criminal Procedures was never applied to regulate any of the stages of the procedure and the federal judges specialized in the accusatory and oral criminal process no longer are exercising their jurisdiction in the State of Mexico, then they will be able to validate the actions they receive from the local judge with the support of the fifth transitory articles and 26, penultimate paragraph, of the National Code of Criminal Procedures, and be in a position to decide on the term for complementary research. It is not an obstacle to the foregoing that the events for which the investigation was initiated have taken place before the entry into force of the aforementioned code, if it is considered that its transitory third article, which conditions its application to events subsequent to its entry into force force, was superseded by a reform published on June 17, 2016 in the indicated official media, which provides that the repealed legislation will be applicable when the criminal proceeding had originated.

Article 27. Origin of incompetence by plea.

At any stage of the procedure, except for the exceptions provided for in this Code, the Court that recognizes its incompetence will send the corresponding records to the one it considers competent and, where appropriate, will also make the accused available to them.

The plea may be promoted in writing, or orally, in any of the hearings before the Jurisdictional Body that hears the matter until before the order to open the trial, asking it to refrain from hearing it and to refer the case and its records to whom it deems competent.

If the incompetence is of the Judicial Body, it must be promoted within the period of three days following the notification of the resolution that sets the date for the trial hearing to take effect. In this case, it will be promoted before the control Judge who established the competence of the Trial Court, without prejudice to being declared ex officio. The declination cannot be promoted in the foreseen cases of competition for reasons of security.

Explanation: The process to carry out the incompetence by declination is very simple, which will be based on the following points:

- ***a) The court that is hearing the matter in case it is considered incompetent will send the records to the one it considers competent, and in case of having an accused undergoing some type of personal precautionary measure such as preventive detention, it will also make it available***

- ***b) This incident could be raised at any time until before the order to open the trial is issued.***

c) If the incompetence is promoted by the court, it must be presented 3 days after the notification for the trial hearing.

These judicial criteria will help to better interpret this article:

**TERRITORIAL COMPETENCE BY EXCEPTION FOR REASONS OF SECURITY IN PRISONS. IT IS THE CORRESPONDENCE OF THE JUDGE OF THE PLACE WHERE THE MAXIMUM SECURITY CENTER IS LOCATED TO WHICH THE DEFENDANT HAS BEEN TRANSFERRED AND OF THE CLAIMING JUDGE TO PROVIDE WHAT IS NECESSARY FOR SENDING THE RECORDS OF THE DIGITAL FOLDER THAT WAS PROCESSED BEFORE HIM AND THOSE OF THE FOLDER. OF INVESTIGATION (EXTENSIVE INTERPRETATION OF ARTICLE 27 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES). Pursuant to article 22 of the National Code of Criminal Procedures, the territorial jurisdiction of exception for security reasons corresponds to the Judge of the place where the maximum security center to which the accused is transferred is located. For its part, article 27 of this ordinance states that incompetence due to pleas may be promoted at any stage of the procedure, except for the exceptions provided for in the code itself, and the body that recognizes its incompetence will send the corresponding records to the one it considers competent and, In his case, he will also make the accused available to him; and in its last paragraph it establishes that the declination cannot be promoted in the foreseen cases of competition due to security. However, if by instructions of the commissioner of the Decentralized Administrative Body Prevention and Social Rehabilitation the accused was transferred to another detention center, by virtue of the fact that the one in which he was found did not comply with the adequate security measures and systems for the permanence of the people who are involved in the commission of crimes of high social impact, with a high risk to society and with great capacity for planning and execution, which was made known to the Control Judge, who considered the hypothesis of article 22 referred to updated. and urged the Superior Court of Justice of the State so that the competent court in turn continue with the corresponding stage of the criminal case and, in principle, the local Judge of the place of the detention center admitted the jurisdiction to hear the case for safety reasons; However, in a subsequent order, it considers that it cannot hold the intermediate hearing within the legal term.*, because the State Attorney General's Office had not received the investigation folder and declined its jurisdiction in favor of the criminal control and oral trial judge of the place where the accused was being held, so as not to violate his procedural rights, then, the competent body to know about this type of special jurisdiction is that of the place where the detention center to which the accused was transferred for security reasons is located, since he cannot decline it for various reasons if he had already admitted it, that is, the lack receipt of the investigation folder by the State Prosecutor's Office, has nothing to do with the question of competence, since it is not a fact that affects the general and exception rules to establish it, provided for in articles 20 and 22 of the code aforementioned; especially that the territorial jurisdiction of exception for security reasons cannot be declined by the Judge who exercises jurisdiction in the place where the accused is being held, because there is an express prohibition to do so, established in the last paragraph of article 27*

invoked, this while the reasons for which said competence was established subsist. Likewise, this precept says nothing, expressly, regarding the records of the investigation folder that supports or

constitutes the origin of the criminal case, which the judge does not have in his power because he is in charge of the Public Ministry, who has the quality of party within the criminal case and is responsible for conducting the investigation, ordering the pertinent and useful procedures to demonstrate , or not, the existence of the crime and the responsibility of the person who committed it or participated in its commission, as well as complying with the other procedural obligations; Therefore, from an extensive interpretation of that normative portion, it can be inferred that the Judge who declares himself incompetent must provide what is necessary so that not only the records of the digital folder that was processed before him are sent, but also those of the folder of investigation, for which it must require the agent of the Public Prosecutor's Office to send the latter to the State Attorney General's Office where the body that has been found to have jurisdiction exercises jurisdiction, so that it can turn it over to the corresponding social representative to intervene as a party within the criminal case, so that the criminal procedure can continue and that its process is not left in insecurity or legal uncertainty and, with it, the governed who is subject to the criminal investigation, especially since said collaboration is allowed in terms of article 74 of the aforementioned code, with the understanding that, where appropriate, the lack of the agreement indicated therein is inconsequential, since the moment when the law should be applied or not to be applied cannot be left to the whim of the federal entities. the continuation of the criminal procedure.

LACK OF COMPETENCE DUE TO DECLINE OF THE CONTROL JUDGE BY REASON OF JURISDICTION. PROCESSING TO BE FOLLOWED WHEN PROMOTED BY THE DEFENDANT, AND ONE WHO KNOWS THE MATTER REJECTS THE RELATED EXCEPTION AND SUPPORTS HIS LEGAL COMPETENCE (JOINT INTERPRETATION OF ARTICLES 27 AND 29 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES). From the joint interpretation of articles 27 and 29 of the National Code of Criminal Procedures, it is noted that once the defendant requests the plea, the common jurisdiction control judge who hears the matter must call a hearing and rule on it. . The decision that it assumes can be in two aspects: one, to recognize its incompetence and, consequently, to send the corresponding records to the Federal Judge that it considers competent; two, to reject the exception of incompetence and sustain that he is the competent Judge. Regarding this second possibility, the cited code does not contain a rule that establishes whether with this decision the incidental issue is closed and, from another angle, it does not provide for its review by means of an appeal, so that in order for the issue to competence is definitively resolved, what is appropriate is that if the judge of control of the common jurisdiction maintains his legal competence, after issuing his position in the hearing, he sends the records to the Federal Judge so that the incidental matter is ventilated in its entirety, before of the issuance of the sentence, since it is necessary to exhaust the route proposed by the accused, which in the

species stands as a right to, at least, send the records to the judge who deems competent and obtain his opinion.

LACK OF COMPETENCE DUE TO DECLINE OF THE CONTROL JUDGE IN THE ACCUSATORY CRIMINAL SYSTEM. IF IT WAS NOT RAISED WITHIN THE PERIOD AND MANNER ESTABLISHED IN ARTICLE 27 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, BUT IN THE ORAL TRIAL HEARING BEFORE THE TRIAL COURT, IN ORDER TO SAFEGUARD THE FUNDAMENTAL RIGHTS OF CERTAINTY, LEGAL CERTAINTY AND DUE PROCESS THE JUDGE WHO PREVENTION SHOULD KEEP KNOWING ABOUT THE MATTER. In accordance with the aforementioned precept, there is the possibility that the lack of jurisdiction for pleas may be raised by the court itself; that it be promoted in writing or orally by the parties, in any of the hearings before the court that hears the matter until before the order to open the trial; or that in the case of the incompetence of the court*of prosecution, can be promoted before the control judge who set the jurisdiction of this court, within the period of three days following the notification of the resolution that sets the date for the trial hearing. In this situation, if the incompetence due to pleas is not raised within the legally established term and manner, but in the oral trial hearing before the trial court, in order to safeguard the fundamental rights of certainty, legal certainty and due process, The Judge who prevented the matter should continue to be heard, since a contrary determination would leave the defendants in a state of defenselessness when the litigation varies, since the criminal process must necessarily be followed due to the criminal act indicated in the order of connection to the process and, with respect to of which, the parties built the theory of the case. This is so, because the Judge must analyze his jurisdiction when resolving the legal situation of the accused, since although there is no extension or waiver of jurisdiction for that procedural stage, he cannot refrain from pronouncing urgent rulings, such as the issuance of the writ of constitutional term, being able to issue based on the precepts that describe the crime or crimes that are really considered up-to-date, regardless of whether the respective competence declined, remitting the records at the appropriate time to the Judge who considered competent. Therefore, if the Judge who took cognizance of the matter, when resolving the legal situation of the defendants and when carrying out the corresponding legal classification, did not raise the lack of jurisdiction due to pleas, he expressly accepted his jurisdiction; Consequently, it must continue to hear about the aforementioned criminal proceedings regarding criminal conduct in accordance with the respective ministerial request.*

Article 28. Origin of incompetence by inhibition.

At any stage of the procedure, the inhibition will be processed at the request of any of the parties before the jurisdictional body that it deems competent to deal with the matter; If applicable, the Court that recognizes its incompetence will forward the corresponding records to the person determined to be competent and, where appropriate, will also make the accused available to them.

The inhibition may be promoted in writing, or orally, in a hearing before the control Judge who is considered to have knowledge of the matter until before the order to open the trial is issued.

If the incompetence belongs to the trial court, it must promote the incompetence within the period of three days following the notification of the resolution that sets the date for the trial hearing to take effect. In this case, it will be promoted before the Court of prosecution that is considered should hear the matter.

Inhibitory proceedings may not be promoted in the foreseen cases of competition for reasons of security.

Explanation: The incompetence by inhibition has the purpose that any of the parties within the procedure can request the judicial body that considers this situation competent.

It is important as a party to justify and substantiate why it is considered that the court that is handling the matter is not competent.

Only as a cause of exception to this rule, it is established that in the event that the competition has been carried out for security reasons, and for this, it will be necessary to attend to what is established in numeral 22 of this same legal system, where it establishes the cases in which an issue can be brought for these reasons.

Article 29. Urgent actions before an incompetent Control Judge.

The competition for declining or inhibitory may not be resolved until after the actions that do not admit delay such as precautionary measures are carried out and, in the event that there is a detainee, when the legality of the detention has been resolved, the accusation formulated, resolved the origin of the precautionary measures requested and the link to the process.

The incompetent Control Judge for declining or inhibiting will send the records ex officio and, where appropriate, will make the accused available to the competent Control Judge after having carried out the urgent procedures set forth in the previous paragraph.

If the judicial authority to whom the actions are referred does not admit jurisdiction, it will return the records to the declining party; if he insists on rejecting it, he will submit the proceedings before the competent jurisdictional body, in accordance with what is established in the respective Organic Law, with the purpose of ruling on who should know. No jurisdictional body can promote competition in favor of its superior in degree.

Explanation: Existing procedures that, due to their simple nature or due to the fatal terms required by the code for compliance, must be carried out immediately, as is the case of those established in the first paragraph of this article, by what ministerial authority is aware of. of the matter should be practiced in the place where you are.

In the event that there is a dispute between the judicial bodies in relation to who should be the one who knows about any criminal process, they must go to what is established in the respective organic law.

CHAPTER III: ACCUMULATION AND SEPARATION OF PROCESSES

Article 30. Causes of accumulation and connection.

For the purposes of this Code, there will be accumulation of processes when:

I.- It is a contest of crimes;

II.- Related crimes are investigated;

III.- In those cases followed against the perpetrators or participants in the same crime, or

IV.- The same crime committed against different people is being investigated. It will be understood that there is a connection between crimes when they have been committed simultaneously by several people gathered together, or by several people at different times and places by virtue of a concert between them, or to procure the means to commit another, to facilitate its execution, to consummate it or to ensure impunity.

It will be understood that there is a connection between crimes when they have been committed simultaneously by several people gathered together, or by several people at different times and places by virtue of a concert between them, or to procure the means to commit another, to facilitate its execution, to consummate it or to ensure impunity.

There is a real competition when several crimes are committed with a plurality of behaviors. There is an ideal contest when several crimes are committed with a single conduct. There will be no competition in the case of a continuing crime in terms of the applicable legislation. In these cases, the essential elements of each legal classification and the corresponding class of bankruptcy will be made known.

Explanation: It may be requested before the jurisdictional body that accumulates in the processes when these have been carried out within different criminal cases and it is a real concurrence of crimes. The same happens when with a plurality of conducts various crimes are committed or failing that It is an ideal competition which occurs when several crimes are committed with a single conduct. These judicial criteria will help to better interpret this article:

ACCUMULATION OF PROCEEDINGS FOR RELATED CRIMES IN THE ACCUSATORY CRIMINAL SYSTEM. THE INITIAL TIMEFRAME TO PRONOUNCE REGARDING ITS ORIGIN IS FROM THE ORDER OF LINK TO THE PROCESS, BY CONSTITUTING THE RESOLUTION WHERE THE PROBABLE FACTS ARE FIXED ON WHICH THE PROCESS WILL BE CONTINUED OR THE EARLY FORMS OF ITS TERMINATION WILL BE DETERMINED, THE OPENING TO TRIAL OR THE DISMISSAL. Article 30 of the National Code of Criminal Procedures establishes the figure of connectedness of crimes, the nature of which refers to when crimes are committed simultaneously by several people together, or at different times and places, by virtue of prior agreement between them, or to procure the means to commit another, and facilitate its execution, consummate it or ensure impunity.

Thus, the normative hypothesis of connectedness of crimes refers to various factors or circumstances that involve facts, so the judge must be convinced that in both crimes there was an identity of persons to commit, facilitate execution, consummate or ensure impunity. of a crime Under this premise, only when the Judge has a minimum conviction of the facts, he will be able to confront them and determine, where appropriate, the accumulation of processes, both already initiated. For its part, article 32 of the code itself only refers to the conclusion of the origin of the accumulation, to the specify that it must be before the order to open the trial is issued; while numeral 318 of the aforementioned ordinance establishes the effects of the order of link to the process, by determining that in said order the criminal act or acts will be established on which the process will be continued or the anticipated forms of its termination will be determined, the opening to trial or dismissal. Under these conditions, it is concluded that the accumulation of processes for related crimes must be substantiated based on the facts determined in the order of connection to the process, and that promoted this incident, it can be resolved in the same initial hearing or summon another within the following three days so that, after the debate raised, without further processing, it is resolved accordingly, since it is from said order that the temporality begins to rule on the origin of the accumulation, by constituting the resolution where the probable facts on which the process will continue or the anticipated forms of its termination, the opening of trial or the dismissal will be determined.

Article 31. Competition in accumulation.

When two or more processes are capable of accumulation, and are followed by different jurisdictional body, the corresponding one will be competent, in accordance with the general rules provided for in this Code, weighing at all times the competition for reasons of security; In the event that doubt persists, the person who knows the crime whose punishability is greater will be competent. If the crimes establish the same punishability, the competence will be the one who knows the oldest procedural acts, and if they began on the same date, the one who prevented it first. For the purposes of this article, it will be understood that the person who issued the first resolution of the procedure warned.

Explanation: For the purposes of determining jurisdiction based on who should know about a criminal proceeding, the priority rules established in this article should be followed, first of all it must be taken into account that the competent court should know as established in the Organic Laws respective, and in the event that doubt arises based on this, the rules established in this article must be followed.

Article 32. Term to decree the accumulation.

The accumulation may be decreed until before the order to open the trial is issued.

Explanation: As a fatal term, the accumulation of cases must be promoted before the order to open the oral trial is decreed, which is evidently issued after the

intermediate hearing has been completed in its oral phase. These judicial criteria will help to better interpret this article:

ACCUMULATION OF PROCEEDINGS FOR RELATED CRIMES IN THE ACCUSATORY CRIMINAL SYSTEM. THE INITIAL TIMEFRAME FOR PRONOUNCING REGARDING ITS ORIGIN IS FROM THE ORDER LINKAGE TO THE PROCESS, BY CONSTITUTING THE RESOLUTION WHERE THE PROBABLE FACTS ARE FIXED ON WHICH THE PROCESS WILL BE CONTINUED OR THE EARLY FORMS OF ITS TERMINATION WILL BE DETERMINED, THE OPENING TO TRIAL OR THE DISMISSAL. Article 30 of the National Code of Criminal Procedures establishes the figure of connectedness of crimes, the nature of which refers to when crimes are committed simultaneously by several people together, or at different times and places, by virtue of prior agreement between them, or to procure the means to commit another, and facilitate its execution, consummate it or ensure impunity. Thus, the normative hypothesis of connectedness of crimes refers to various factors or circumstances that involve facts, so the judge must be convinced that in both crimes there was an identity of persons to commit, facilitate execution, consummate or ensure impunity. of a crime Under this premise, only when the Judge has a minimum conviction of the facts, he will be able to confront them and determine, where appropriate, the accumulation of processes, both already initiated. For its part, article 32 of the code itself only refers to the conclusion of the admissibility of the accumulation, specifying that it must be before the order to open the trial is issued; while numeral 318 of the aforementioned ordinance establishes the effects of the order of link to the process, by determining that in said order the criminal act or acts will be established on which the process will be continued or the anticipated forms of its termination will be determined, the opening to trial or dismissal. Under these conditions, it is concluded that the accumulation of processes for related crimes must be substantiated based on the facts determined in the order of connection to the process, and that promoted this incident, it can be resolved in the same initial hearing or summon another within the following three days so that, after the debate raised, without further processing, it is resolved accordingly, since it is from said order that the temporality begins to rule on the origin of the accumulation, by constituting the resolution where the probable facts on which the process will continue or the anticipated forms of its termination, the opening of trial or the dismissal will be determined.

Article 33. Substantiation of accumulation.

Once the accumulation has been promoted, the Control Judge will summon the parties to a hearing that must take place within the following three days, in which they may manifest themselves and make the observations they deem pertinent regarding the matter under discussion and without further ado it will be resolved in the same as appropriate.

Explanation: The request will be submitted for debate so that the criminal cases are accumulated, where it must be observed if any of the fractions established in numeral 30 concur in any of its four fractions.

In the event that any of the parties has an argument to justify the contrary, they will make it known in the debate and the control judge will decide what is appropriate.

These judicial criteria will help to better interpret this article:

ACCUMULATION OF PROCESSES IN THE ACCUSATORY CRIMINAL SYSTEM. AGAINST THE DETERMINATION OF THE CONTROL JUDGE WHO DENIES TO DECREE, THE INDIRECT AMPARO PROCEEDS, AS IT CONSTITUTES AN ACT THAT COULD CAUSE A MATERIAL AFFECTATION TO THE SUBSTANTIVE RIGHTS OF THE IMPUTED. denies the defendant the accumulation of various causes filed against him, and he states that he is facing the process in preventive detention, for having imposed said precautionary measure, sustained, among other reasons, in the existence of various processes against him, is not updated a manifest and undoubted cause of inadmissibility of said judgment. The foregoing, because of the legal figure of accumulation and the regulations that regulate it, in conjunction with the nature of the criminal process, which has particularities with respect to the rest of the trials provided for in the national legal order, it is noted that the decision of accumulating or not several criminal proceedings, may cause a material affectation to the human right to liberty in relation to the origin of the precautionary measure of preventive detention, while, if appropriate, it would originate the processing of a single criminal case; In addition, the Judge or trial court should, where appropriate, rule on the figure of the concurrence of crimes for the imposition of the prison sentence. Even the refusal to consolidate the criminal cases could produce a sustained substantive material affectation in the transgression of article 17 of the Political Constitution of the United Mexican States, in relation to the right to a prompt, complete and impartial administration of justice, by affecting substantially the proper development of the process and the principle of concentration and affect the final settlement of the litigation, because in accordance with jurisprudence 1a./J. 74/2018 (10a.), of the First Chamber of the Supreme Court of Justice of the Nation, in the case of criminal matters, the analysis of procedural violations in the direct amparo trial must be limited exclusively to those committed during the hearing of oral trial, for the full operation of the principle of continuity, provided for in article 20 of the Federal Constitution, in such a way that each of the stages into which the process is divided fully fulfills its function and, once exhausted, is advance to the next one without the possibility of returning to the previous one, which is why the parties are obliged to assert their arguments at the corresponding moment or stage because, otherwise, it is understood, as a general rule, that their right has been exhausted to be dissatisfied Therefore, against the determination that denies decreeing the accumulation of various criminal proceedings, indirect protection proceeds, as it constitutes an act that could cause a material affectation to the substantive rights of the accused.

Article 34. Effects of accumulation.

If the accumulation is resolved, the Control Judge will request the remission of the records, and where appropriate, that they be immediately made available to the accused or accused. The Control Judge will notify those who have a precautionary measure other

than preventive detention of the obligation to appear in a peremptory term before him, as well as the victim or offended party.

Explanation: If the accumulation of criminal cases is accepted, the following must be done:

a) Request the referral of the records to the accumulated case.

b) In the event of this happening, make available to the accused

c) Notify those who have a precautionary measure other than preventive detention.

Article 35. Separation of processes.

The separation of processes may be ordered when the following circumstances occur:

I. When requested by one of the parties before the order to open the trial, and

II. When the Control Judge deems that if the accumulation continues, the process would be delayed.

The separation of processes will be promoted in the same way as accumulation. The separation may be promoted until before the trial hearing.

Once the separation of processes has been decreed, each matter will be heard by the control Judge who knew before the accumulation was made. If said judge is different from the one who decreed the separation of processes, he may not refuse to hear the case, without prejudice to the fact that a question of competence may arise.

The resolution of the Control Judge that declares the separation of processes inadmissible, will not admit any appeal.

Explanation: The separation of processes can be promoted by any of the parties, and corresponds more than anything to strategies of a procedural nature that one of the parties may have to obtain benefits for their sponsor.

On the other hand, it could be ordered by the judge, and this could occur in the event that the opening of a trial considers that the accumulated lawsuits could complicate the normal development of the trial hearing.

These judicial criteria will help to better interpret this article:

SEPARATION OF PROCESSES PROVIDED FOR IN ARTICLE 35 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. IT MUST BE REQUESTED BEFORE THE OPENING OF TRIAL, AND DECREED EVEN BEFORE THE TRIAL HEARING. In accordance with the scenario in which the effective judicial protection provided for in article 17 of the Political Constitution of the United Mexican States is developed, the origin of the request is conditioned, among other requirements, to the

opportunity in which the respective request is made. On the other hand, reading article 35 of the National Code of Criminal Procedures could lead one to consider that there are two moments in which the separation of processes can be requested: a) before the order to open the trial; or, b) until before the trial hearing, which makes it necessary to clarify this point from the interpretation that is assumed of the cited precept, in conjunction with the normative context of which it is a part. Thus, under a systematic interpretation of articles 32, 33, 35, 211, section II and 344 of the indicated code, it is concluded that the separation of processes must be requested by one of the parties before the issuance of the order to open the trial and can be decreed before the trial hearing. A statement that agrees with two of the principles on which the accusatory system is based: continuity in the proceedings and the possibility of contradicting what has been resolved, without causing further delay in the final decision on the matter.

CHAPTER IV: EXCUSES, RECUSES AND IMPEDIMENTS

Article 36. Excuse or challenge.

Judges and magistrates must excuse themselves or may be challenged to hear the matters in which they intervene due to any of the causes of impediment established in this Code, which cannot be dispensed by the will of the parties.

Explanation: Judges and magistrates must excuse themselves at all times if they are within any of the cases established in numeral 37 of the national code of criminal procedures.

This resolution is extremely important since it achieves compliance with one of the pillars of the traditional system, which is to comply with the impartiality of the judge who must prevail in criminal proceedings.

Article 37. Causes of impediment.

The following are causes of impediment of judges and magistrates:

I. Having intervened in the same procedure as Public Ministry, Defender, Legal Adviser, complainant or complainant, or having exercised the private criminal action; having acted as an expert, technical consultant, witness or having a direct interest in the procedure;

II. Being a spouse, common-law wife or common-law husband, cohabiting, being related in a straight line without limitation of degree, in a collateral line by consanguinity and by affinity up to the second degree with any of the interested parties, or that he cohabits or has cohabited with any of them;

III. Being or having been a guardian, curator, having been under guardianship or conservatorship of any of the parties, being or having been an administrator of their assets by any title;

IV. When he, his spouse, concubine, common-law partner, or any of his relatives in the degrees expressed in fraction II of this article, have a pending trial initiated previously with any of the parties;

V. When he, his spouse, concubine, common-law partner, or any of his relatives in the degrees expressed in fraction II of this article, is a creditor, debtor, landlord, tenant, or guarantor of any of the parties, or have any partnership with them;

VI. When before starting the procedure or during it, he, his spouse, concubine, cohabitant or any of his relatives in the degrees expressed in section II of this article, have presented a complaint, complaint, demand or have filed any legal action against any of the parties, or when before beginning the procedure it had been denounced or accused by any of them;

VII. Having given advice or expressed his opinion on the procedure out of court or having made promises that imply partiality in favor of or against any of the parties;

VIII. When he, his spouse, concubine, cohabitant or any of his relatives in the degrees expressed in fraction II of this article, have received or receive benefits from any of the parties or if, after the initiation of the procedure, they have received presents or gifts regardless of their value, or

IX. In the case of the judges of the trial court, having served as a control judge in the same procedure.

Article 38. Excuse.

When a Judge or Magistrate notices that any of the causes of impediment is updated, he will declare himself separated from the matter without a hearing of the parties and will send the records to the competent jurisdictional body, in accordance with what is established by the Organic Law, so that it can decide who should keep learning about it.

Article 39. Challenge.

When the Judge or Magistrate does not excuse himself despite having some impediment, the challenge will proceed.

Explanation: the judge or magistrate must rule based on the elements for which he must excuse himself, however, in case of not doing so, the parties must indicate some of the assumptions established in numeral 37 of the adjective codification for effects to generate the recusal.

Article 40. Time and form of challenge.

The challenge must be filed before the challenged Judge or Magistrate, in writing and within forty-eight hours after the impediment became known. It will be filed orally if it is known in the course of a hearing and it will indicate, under penalty of inadmissibility, the cause in which it is justified and the pertinent means of proof. Any recusal that is notoriously inadmissible or is promoted extemporaneously will be rejected outright**.**

Explanation: At the same moment in which any cause for which the challenge can be presented is known, this will be done within 48 hours following the request in the event that it has been known outside of the hearing. and in hearing if it is within the scope of any hearing.

Article 41. Recusal process.

Once the challenge has been filed, the challenged party will send the record of the proceedings and the evidence offered to the competent jurisdictional Body, in accordance with the provisions of the Organic Law for it to be qualified.

Once the brief has been received, a report will be requested from the challenged judge, who will render it within twenty-four hours, indicating the date and time for the hearing within three days following receipt of the report, which will be held with the parties that appear, which may make use of the word without allowing replies.

Concluded the debate, the competent jurisdictional Body will decide immediately on the legality of the cause of recusal that has been indicated and, against the same, there will be no recourse.

Explanation: The challenge process, as can be read in the article, is very simple, so the process will be as follows:

A) The challenged judge (considered incompetent) sends the information collected to the judge considered competent.

B) The challenged judge will be asked to report within 24 hours.

C) The judge considered competent decides on the challenge and determines who will be the competent body.

Article 42. Effects of the challenge and excuse.

The challenged Judge or Magistrate will refrain from continuing to hear the corresponding hearing, will order its suspension and will only be able to carry out those mere formality or urgent acts that do not admit delay. The substitution of the Judge or Magistrate will be determined in the terms indicated by the Organic Law.

Explanation: The challenged judge must refrain from continuing to process the process that is being carried out until it is resolved which court is competent, however the acts considered urgent, which must be determined according to their nature. They must be carried out with the necessary speed.

Article 43. Impediments of the Public Ministry and experts.

The Public Ministry and the experts must excuse themselves or may be challenged for the same reasons provided for judges or magistrates.

The excuse or challenge will be resolved by the authority that is competent in accordance with the applicable provisions, after carrying out the investigation that is deemed appropriate.

Explanation: The public ministry must also act based on its competence and basis of action, as well as the experts, respecting what the organic laws of the prosecutor's offices indicate for such purposes, however, the investigation and actions that are indicated must be carried out. considered essential for the success of the investigation, regardless of whether these proceedings are subsequently referred to another public prosecutor.

TITLE IV: PROCEDURAL ACTS
CHAPTER I: FORMALITIES

Article 44. Orality of procedural actions.

Hearings will be held orally, and the parties may assist with documents or any other means. In the practice of procedural actions, the available technical means will be used to give them greater agility, accuracy and authenticity, without prejudice to keeping a record of what happened.

The Court will encourage the parties to refrain from reading complete documents or notes of their actions that demonstrate a lack of argumentation and ignorance of the matter. Research records may only be read to support memory, as well as to demonstrate or overcome contradictions; The party interested in reading any document or record, will request the judge who presides over the hearing, authorization to proceed to do so, specifically indicating the reason for their request as established in this article, without this being a reason for the oral argument to be replaced.

Explanation: The hearings must be carried out through oral argument, this has already been fully resolved and overcome, what is important to explain is that lawyers do not have to be orators or even have oratorical skills for it, the test data and the arguments that are going to be made in audience can be easily supported by notes that help to build logical arguments.

What is not allowed is literally to bring all the arguments and what is going to be presented before the judge in writing and there is no ability to argue or, where appropriate, be able to react when there are counterarguments from the counterparty which surely they will remove the litigant from the script in which his notes were found, so that appearing at the hearing under these circumstances, can give the judge tools to prove what it is about a defense or even deficient performance and lacking in technique, and this lead them to make the decision to decree that there is no technical defense.

Article 45. Language.

The procedural acts must be carried out in Spanish.

When people do not speak or do not understand the Spanish language, a translator or interpreter must be provided, and they will be allowed to use their own language or language, as well as people who have some impediment to make themselves understood. In the event that the accused does not speak or understand the Spanish language, he must be assisted by a translator or interpreter to communicate with his Defender in the interviews that he holds with him. The accused may appoint a translator or interpreter of his confidence, at his own expense.

If it is a person with some type of disability, they have the right to be provided with an interpreter or those technological means that allow them to obtain the requested information in an understandable way or, in the absence of these, someone who knows how to communicate with them. In the acts of communication, the Judicial Bodies must be certain that the person with disabilities has been informed of the judicial decisions that they should know about and that they understand their scope. For this, the means that, depending on the case, guarantee that such understanding exists must be used.

When at the well-founded request of the person with a disability, or in the opinion of the competent authority, it is necessary to adopt other measures to safeguard their right to be duly assisted, the person with a disability may receive assistance in terms of projected shorthand, under the terms of the law. of the matter, by a sign language interpreter or through any other means that allows a full understanding of each and every one of the proceedings.

The means of proof whose content is in a language other than Spanish must be translated and, in order to give legal certainty about the declarations of the declarant, a record of his declaration will be left in the language of origin.

In the case of members of indigenous peoples or communities, they will be appointed an interpreter who has knowledge of their language and culture, even when they speak Spanish, if they so request.

The Jurisdictional Body will guarantee access to translators and interpreters who will assist in the process as required.

Explanation: The criminal process must be understood from the moment that a person is detained, either in the public prosecutor's office or at the disposal of the control judge, each party must understand, each communication that is made, since not doing so can also trigger violations Serious to the process and the right of the detainee, that the process has to be restored.

That is why it is common for people detained to be foreigners, indigenous, in conclusion, who do not speak the Spanish language.

Under this logic, the authorities must provide interpreters who can translate into Spanish the circumstances, rights and in general any communication that is necessary for the process to be carried out respecting fundamental rights.

The same rules apply to any person who has some type of disability, it must be guaranteed through an interpreter, or a trusted person who knows how to communicate with them, that they receive the communications and understand what happens within the process, since only in this way, in Together with his defender, he will know what decisions to make for the purpose of exercising his defense, and in the case of victims, his victim claims.

In evidentiary matters, if the parties wish to incorporate a record whose content appears in a language other than Spanish, there must be interpreters who translate the content of that record.

Article 46. Statements and interrogations with interpreters and translators.

People will be interrogated in Spanish, with the assistance of a translator or interpreter. In no case may the parties or witnesses be interpreters.

Explanation: The administration of justice will be in charge of providing interpreters in the event that one of the parties does not speak Spanish, so they must at all times be accompanied by one of these, in the event that a person who does not speak Spanish In the Spanish language, if a hearing is held and questions of the criminal process are resolved, it could be declared null and void at the time and the process be reinstated.

Article 47. Place of hearings.

The Jurisdictional Body will hold the hearings in the corresponding room, except if this may cause a serious alteration of public order, does not guarantee the defense of any of the interests involved in the procedure or seriously impedes its realization, in which case they will be held in the Place designated for this purpose by the Jurisdictional Body and under the security measures determined by it, in accordance with the provisions of the applicable legislation.

Explanation: The general rule is that hearings must be held in the rooms that are located in the justice centers established for such purposes.

However, if there is an exceptional cause, such as a demonstration, that the rooms have been taken, or even that the accused or defendant is hospitalized, the hearing can be held in the place determined by the court, It could be even in the hospital, or in any other place.

Article 48. Time.

Procedural acts may be carried out on any day and at any time, without the need for prior authorization. The place, time and date on which they are fulfilled will be recorded. The omission of these data will not nullify the act, unless it cannot be determined, according to the data of the registry or other related data, the date on which it was performed.

Explanation: There are no deadlines or established terms to carry out certain procedural acts, unless the law establishes it precisely, or in the case of constitutional terms.

For other procedural acts, the established general rule applies.

Article 49. Protest.

Within any hearing and before any person over eighteen years of age begins their statement, with the exception of the accused, they will be informed of the criminal sanctions that the law establishes for those who behave falsely, refuse to testify or grant the protest of law; Immediately afterwards, an oath will be taken to tell the truth.

Those who are between twelve years of age and less than eighteen, will be informed that they must conduct themselves truthfully in their statements before the Court, which will be done in the presence of the person who exercises parental authority or guardianship and public legal assistance or private, and it will be explained to them that, if they behave falsely, they will incur in conduct classified as a crime in criminal law and will be entitled to a measure in accordance with the applicable provisions.

Persons under twelve years of age and defendants who wish to testify were urged to conduct themselves truthfully.

Explanation: All persons who know or have knowledge of information that may be relevant to clarify a fact that is being investigated must conduct themselves honestly before the public prosecutor or the judge for the purpose of declaring everything they know about the fact.

In the event that this person distorts the information about what he knows, lying, providing other false information, and in general, any manifestation of the will that obstructs the clarification of the facts, he may be penalized for making false statements before an authority.

Criminal law only punishes people over 12 years of age for criminal conduct, so it is not legally possible to warn a person under 12 years of age that the fact of lying makes them a candidate for committing a crime, so they will only be asked to that they behave truthfully.

Article 50. Access to digital folders.

The parties will always have access to the content of the digital folders consisting of the hearing and complementary records. Said records may also be consulted by third parties when they give an account of actions that are public, unless during the process the Judicial Body restricts access to avoid affecting its normal conduct, the principle of presumption of innocence or the rights to privacy or to the privacy of the parties, or, is expressly prohibited in the law of the matter. The Court will authorize the issuance of copies of the contents of the digital folders or of the part of them that are requested by the parties.

Explanation: When criminal proceedings are formally initiated before the court, that is, before the judge, the latter is obliged to keep an electronic record of each of the petitions generated, resolutions and sentences issued, and in general, any activity that is developed in court.

That is why the parties may request access to it, which is currently done through access to the court, where the proceedings can be reviewed in detail.

These judicial criteria will help to better interpret this article:

VIDEO RECORDINGS OF HEARINGS HELD IN ACCUSATORY AND ORAL CRIMINAL PROCEEDINGS CONTAINED IN COMPUTER FILES STORED ON A DIGITAL VERSATILE DISC (DVD). IF THE RESPONSIBLE AUTHORITY SENDS THEM AS AN ANNEX OR SUPPORT TO ITS JUSTIFIED REPORT, THEY ACQUIRE THE LEGAL NATURE OF PUBLIC DOCUMENTARY EVIDENCE, AND SHOULD BE TAKEN AS DISCLAIMED WITHOUT THE NEED FOR A SPECIAL HEARING. In compliance with the principles of orality and publicity enshrined in article 20, first paragraph, of the Political Constitution of the United Mexican States, amended by decree published in the Official Gazette of the Federation on June 18, 2008, in criminal proceedings of adversarial court, it is a requirement that oral hearings be recorded in audio and video formats, for which the courts implemented the figure of the "electronic file", as a storage device for said information on digital media to preserve the records that comprise them , whose legal procedural nature is that of a public instrumental evidence of actions as it is the simple fixation or registration, by digital or electronic means, of the acts or proceedings typical of the processing of a criminal case of an accusatory nature, especially that, in At the appropriate procedural moment, the judges must refer to the records or records of said criminal cases stored in digital format for the purposes of issuing their respective sentences. However, when the criminal judicial authority indicated as responsible, in terms of article 149 of the Amparo Law, sends as an annex or support of its justified report the video recording of an oral and public hearing contained in a digital versatile disc (DVD), Said evidence for the purposes of the amparo trial acquires the character of public documentary evidence lato sensu, tending to prove the existence *of the act of authority claimed and its constitutionality; therefore, it must be considered unburdened by its own and special nature without the need to hold a special hearing for the reproduction of its content. However, to provide legal certainty to the parties in relation to what was stated by the responsible authority, the amparo judge must give them a view of the content of the justified report that contains said video recording, so that, if they deem it necessary, they can consult the information contained in digital format and state what is right to them.*

Article 51. Use of electronic means.

Throughout the criminal process, electronic means may be used in all actions to facilitate their operation, including the police report; as well as they may implement, for the presentation of complaints or complaints online that allow their follow-up. Real-time videoconferencing or other forms of communication that occur with new technologies may be used for the reception and transmission of evidence and the performance of procedural acts, as long as the identity of the subjects involved in said process is previously guaranteed. act.

Explanation: Advances in technology are not alien to criminal proceedings, which is why the effects of expediting access to justice, reducing costs, as well as being

able to unburden witnesses who for reasons unrelated to it (such as obtaining the statement of a witness who is located in another country), is that these alternatives exist.

The important thing in this case is to make sure that the person who will be interviewed or who will carry out an action via videoconference is who they say they are, and that the authorities make sure that this is the case. These are some types of acts that can be carried out through the use of technology.

a) actions within the process: recorded interviews are regularly generated and stored in the prosecutor's records.

b) online complaints and complaints: At this point it is necessary that each of the state prosecutors' offices as well as the attorney general of the republic invest in software development so that people can file their complaints with the mere access to Internet.

CHAPTER II: AUDIENCES

Article 52. Common provisions.

Procedural acts that must be resolved by the Court will be carried out through hearings, except in exceptional cases provided for in this Code. The issues discussed in a hearing must be resolved in it.

Explanation: The acts that are resolved by a judge are called orders and resolutions.

In article 67 of the national code of criminal procedures, it indicates the nominated resolutions (which have a name within the process).

Likewise, there are another number of unnamed judicial resolutions (such as the determinations of the public ministry that seek to decree a non-exercise of criminal action, which are found in article 258 of the code) that also require judicial control so that it has all its effects.

Article 53. Discipline in hearings.

The order in the hearings will be in charge of the Judicial Body. Any person who disturbs the order in these may be creditor to a measure of urgency without prejudice to the fact that they can request their removal from the courtroom and their placement at the disposal of the competent authority.

Before and during the hearings, the accused shall have the right to communicate with his Defender, but not with the public. If you violate that provision, the Court may impose a measure of urgency.

If any person from the public communicates or attempts to communicate with any of the parties, the Court may order that it be withdrawn from the hearing and impose a measure of urgency.

Explanation: In the hearings, the protocols issued by the control judge or trial court indicate for the purpose of guaranteeing that the objectives of the hearing and the process are fulfilled.

In the event that any intervener does not comply with the orders made by the judge, he may be a candidate for any of the enforcement measures indicated in article 104 of the code.

Consequences for not following protocols can range from being removed from the courtroom to imposing fines or being arrested.

Article 54. Identification of declarants.

Prior to any hearing, the identification of any person who is going to testify will be carried out, for which they must provide their name, surname, age and address. Said registry will be carried out by the auxiliary personnel of the room, leaving a record of the express manifestation of the will of the declarant to make public, or not, his personal data.

Explanation: When you are going to start a hearing, you can find the people who are going to testify either as witnesses, victims or the accused.

That is why the room manager, belonging to the judiciary, must collect their generals for the purpose of verifying their identity.

Disclosing the personal data of the parties will be optional, according to the decision that the owner of the data expresses to the court, this for the purpose of protecting their identity, or the particular interests that the individual has in relation to keeping their data confidential.

Article 55. Restrictions on access to hearings.

The Court may, for reasons of order or security in the development of the hearing, prohibit the entry of:

I. Armed persons, unless they perform surveillance or custody functions;

II. Persons who carry union or supporter emblems;

III. People who carry dangerous or prohibited objects or who do not observe the provisions established,

IV. Any other that the Judicial Body considers inappropriate for order or security in the development of the hearing.

The Jurisdictional Body may limit the entry of the public to a certain number of people, according to the capacity of the courtroom, as well as in accordance with the applicable provisions.

Journalists, or accredited media, must inform the Court of their presence in order to locate them in a suitable place for this purpose and must refrain from recording and transmitting the hearing by any means.

Explanation: By simple elementary logic in terms of security, the judge must ensure that the hearings are carried out safely, that any of the people who are in the place, whether they are parties to the process, or the general public, You can count on security in accessing it.

On the other hand, there should not be people who support a criminal process with party or union acronyms, so the judge will prohibit it from happening.

The media will preferably be located in the front part of the hearing room, given that they may have the opportunity to have an adequate physical space to be able to generate the note effectively.

However, they are urged at all times not to divulge personal data, images of the parties in the process, since in addition to the fact that the journalist may be responsible for his actions, they can disrupt constitutional principles of due process.

Article 56. Presence of the accused at the hearings.

Hearings will be held with the uninterrupted presence of who or who make up the Court and the parties involved in the process, unless otherwise provided. The accused may not withdraw from the hearing without authorization from the Court.

The defendant will attend the free hearing in his person and will occupy a seat next to his defense attorney. Only in exceptional cases may security measures be arranged that imply their confinement in an isolated cubicle in the hearing room, when this is an essential measure to safeguard the physical integrity of the participants in the hearing.

If the accused refuses to remain at the hearing, he will be guarded in a nearby room, from which he can follow the hearing, and represented for all purposes by his Defender. When necessary for the development of the hearing, he will be made to appear for the performance of particular acts in which his presence is essential.

Explanation: The accused must be present in the courtrooms, except for exceptional reasons (such as a hearing to request an arrest warrant), so they will not have the freedom to withdraw from the hearing without just cause.

The general rule is that the defendant attends the hearings freely, unless he or she is in pretrial detention, an arrest warrant is executed, an order to appear through the public force, or any other cause that prevents the free movement of the defendant.

If the accused refuses to carry out the hearing in the room designated for such purposes, the judge may transfer him to an alternate room for such purposes.

Article 57. Absence of the parties.

In the event that several Defenders or several Public Ministries are assigned, the presence of any of them will suffice to hold the respective hearing.

The defender may not resign from his conferred position either during the hearings or once notified of them.

If the Defender does not appear at the hearing, or is absent from it without just cause, the defense will be considered abandoned and his replacement will be carried out as soon

as possible by the Public Defender designated for him, unless the defendant designates immediately. another Defender.

If the Public Prosecutor does not appear at the hearing or is absent from it, his replacement will be made within the same hearing. For this purpose, his hierarchical superior will be notified by any means so that he can be designated immediately.

The substitute Public Prosecutor or the new Defender may request the Court to postpone the start of the hearing or suspend it for a period that may not exceed ten days for the adequate preparation of his intervention in the trial. The Judicial Body will resolve considering the complexity of the case, the circumstances of the absence of the defense or the Public Ministry and the possibilities of postponement.

In the event that the Defender, Legal Adviser or the Public Ministry is absent from the hearing without justified cause, a fine of ten to fifty days of the current minimum wage will be imposed, without prejudice to the corresponding administrative or criminal sanctions. If the victim or offended party does not attend, or withdraws from the hearing, it will continue without her presence, without prejudice to the fact that he may be summoned to appear as a witness.

In the event that the victim or offended party constituted as coadjuvant is absent, or withdraws from the intermediate hearing or trial, he will be deemed to have abandoned his claims.

If the legal adviser of the victim or offended party abandons her advice, or it is deficient, the Court will inform the victim or offended party of their right to appoint another legal adviser.

If the victim or offended party does not want or cannot appoint a Legal Advisor, the Judicial Body will inform the corresponding instance for the purpose of appointing another, and in case of absence, and exceptionally, the Public Ministry will represent him.

The Court must impose the necessary enforcement measures to ensure that the parties appear in court.

Explanation: It is common for more than one defender to be assigned during a criminal process for the purpose of defending a person, which is why the appearance of one of them will be enough for the hearing to take place, as long as the defender who is present is aware of what is being debated, since otherwise, it will be sufficient argument to request the deferral of the hearing, or failing that, a sufficient recess so that the defense gathers the necessary information.

For purposes of the public ministry, the same rules that were explained for the defense in the previous paragraph will apply.

The defense is prevented from resigning from office when two circumstances occur, the first of which is that the hearing has already started, and the second that they have already been notified of the development of the hearing.

When these two circumstances have not occurred, the rules established in article 120 of this code will be followed.

Likewise, if the defense attorney still appears at the hearing and leaves without justified cause or does not appear, the judge must order the defense abandonment and notify the public defender to designate a defense attorney, or in case, that the defendant designate a defense attorney. .

In the case of the public ministry, the same rules as the public defense shall apply.

The new defense and the new public prosecutor will have the right to request a postponement of the hearing so that they can properly prepare their intervention.

The victim, as a party in the process, also has the right to offer evidence and argue for the purpose of asserting their claims, however, if there is an absence of the same under one of the assumptions indicated in the previous paragraphs for the defense and the public prosecutor, and In addition, the process is in the intermediate stage or trial stage, the judge will follow up on the process and its claims will be deemed to have been withdrawn, that is, its right to do so has been precluded.

Finally, in the event that the legal adviser abandons his representation to the victim, or the victim herself, in the judge's opinion, is deficient or systematically commits errors that transcend the rights of the victim, the judge may inform the victim or offended about his right to appoint another adviser.

Only in extreme cases that the victim cannot have legal counsel, can the public prosecutor represent the victim.

Article 58. Duties of the assistants.

Those who attend the hearing must remain in it respectfully, in silence and may not introduce instruments that allow recording video images, sounds or graphics. Nor may they carry weapons or adopt an intimidating, provocative, or contrary to decorum behavior, or alter or affect the development of the hearing.

Explanation: As a general rule, no person belonging to the public of the hearing may enter with any object.

As an exceptional rule, the media may enter their recording equipment as long as the judge is previously informed and the judge has accepted that the recording objects be entered.

Article 59. Of the means of enforcement.

To ensure order in the hearings or reestablish it when it has been altered, as well as to guarantee the observance of its decisions in hearing, the Court may apply any of the means of enforcement established in this Code without distinction.

Explanation: The means of enforcement are "punishments" that the judge can apply to the parties at the hearing, however they cannot be applied arbitrarily, but must be applied when the parties prevent the normal development of the hearings.

They can also be applied to the parties when the judge issues a mandate, and the latter do not carry out the mandate without just cause, such as a mandate to the prison authority for the purpose of providing an inmate with medical care, and this authority unreasonably omit to perform.

The means of enforcement available to the judge are established in number 104 of this code.

Article 60. Criminal acts arising in hearing.

If during the hearing it is noted that there are elements that presume the existence of a criminal act other than the one that constitutes the subject of the procedure, the Court will inform the competent Public Prosecutor's Office and will forward the corresponding record.

Explanation: This article will explain it by means of an example, since I consider it to be the best way to explain it.

During an initial detention control hearing, the judge notices that the detainee has visible injuries to his body, so he is asked what happened to him and the detainee answers that the arresting policeman hit him After having been arrested, likewise the judge, when asking the prosecutor about the information he has in this regard, explained that in the approved police report the arresting police officer indicated that the detainee fled and in pursuit the detainee crashed against a pole and that's why he has those injuries.

The judge is not a fool, under this argument he can request the public ministry to carry out an investigation to verify where these injuries come from.

Article 61. Record of hearings.

All hearings provided for in this Code will be recorded by any technological means available to the Court.

The recording or reproduction of images or sounds will be considered as part of the proceedings and records and will be kept in the custody of the Judiciary for the purposes of the knowledge of other different bodies that know the same procedure and of the parties, always guaranteeing its conservation.

Explanation: Hearings must always be videotaped, because they are oral and therefore there must be a record of what happened in it in order to comply with the process, have evidence for the purpose of appealing what happens there, comply with constitutional principles such as legal certainty, contradiction, among others.

Article 62. Attendance of the accused at hearings.

If the defendant is deprived of his liberty, the Court will determine the special security measures or the mechanisms necessary to guarantee the adequate development of the hearing: prevent escape or acts of violence on the part of the accused or against him.

If the person is free, he will attend the hearing on the day and time that is determined; in case of not showing up, the Judicial Body may impose a means of compulsion and, where appropriate, upon request of the Public Prosecutor's Office, order his appearance. When the accused has been linked to the process, is released, stops attending a hearing, the Public Ministry will request the Jurisdictional Body to impose a precautionary measure or modify the one already imposed.

Explanation: It happens within the process that the control or trial judge, as the case may be, must send the instructions to the penitentiary system, in particular those in charge of custody of the accused so that they release the accused and return them. , in case nothing has changed, to your cell after the end of the hearing.

In the case of people at liberty, they must appear freely at all the hearings that are summoned, and in case of not appearing, they may suffer any of the consequences indicated in the article.

Article 63. Notification in hearing.

The resolutions of the Judicial Body will be issued orally, with expression of its foundations and motivations, leaving those involved in them and those who were obliged to attend formally notified of their issuance, which is recorded in the corresponding registry in the terms provided in this Code.

Explanation: The hearings regularly develop as follows (it does not mean that they are all the same)

a. identification of the parties

b. the use of voice to the party that requested it

c. arguments of the counterparty

d. hearing resolution

When the first three points indicated above have elapsed, the judge will issue a

resolution, this must focus on the points discussed by the parties, opt for one of the points of view, indicate the applicable law and issue a resolution.

What is resolved by the judge in that place is considered notified to the parties, including those who should have attended because they were duly notified and did not.

These judicial criteria will help to better interpret this article:

RESOLUTIONS ISSUED IN THE ACCUSATORY AND ORAL CRIMINAL PROCESS. THEY TAKE EFFECT IMMEDIATELY, WITHOUT THE NEED OF ANY FORMALITY TO THE PARTIES INVOLVED AND THOSE WHO WERE OBLIGATED TO ATTEND THEM FORMALLY. ***1.110 / 5.000***

From article 63 of the National Code of Criminal Procedures, it is noted that the parties that attend oral hearings must be notified in that act, without the need for any formality, attentive to the principles that govern oral trials, particularly those of immediacy, continuity and concentration. In this sense, the defendant is not left defenseless when, despite having attended the hearing, he claims that he is subsequently personally notified of the order linking the process, since the resolutions issued in the accusatory criminal process and oral, take effect immediately, without the need for any formality to the parties involved and those who were obliged to attend them formally; especially if in said order he was made aware of the facts with which he was accused, the background of the investigation exposed by the Public Ministry, from which evidence is noted that establishes that an act has been committed that the law indicates as a crime and that there is a probability that the defendant committed it or participated in its commission.

NOTIFICATION OF THE RESOLUTIONS ISSUED IN THE ORAL HEARINGS IN THE CRIMINAL PROCESS OF ACCUSATORY AND ORAL COURT. THE PARTIES THAT ATTEND MUST BE LEGALLY MADE IN THAT SAME ACT, EXCEPT IN EXCEPTIONAL CASES [ABANDONMENT OF THE CRITERION MAINTAINED IN THE ISOLATED THESIS XVII.1o.P.A.6 P (10a.)].In the case of resolutions issued in the accusatory and oral criminal proceedings, provided for in the National Code of Criminal Procedures, in attention to the principles that govern oral trials, particularly those of immediacy, continuity and concentration, notifications to the The parties that attend the oral hearings must be considered legally made in that same act, except in exceptional cases, since said resolutions are understood to have been notified to the intervening parties and to those who should attend, immediately after they are issued, without the need for formality. some. In addition to the fact that article 63 of the aforementioned national code establishes that the resolutions of the court will be issued orally, with expression of its foundations and motivations, leaving those involved in them and those who were obliged to attend, formally notified of their issuance, by which is not justified to attend to a later date. The foregoing leads this Collegiate Circuit Court to a new reflection and to abandon the criterion sustained in the isolated thesis XVII.1o.P.A.6 P (10a.), title and subtitle: "APPASSATION. WHEN COMPUTING THE TERM TO BRING SAID

APPEAL AGAINST A SENTENCE, THE JUDGES OF THE RELEVANT CHAMBER SHOULD SYSTEMATICALLY AND HARMONIOUSLY INTERPRET THE APPLICABLE PROCEDURAL RULES, WEIGHTING THE NATURE OF SAID DETERMINATION, ITS NOTIFICATION AND WHETHER THE APPEALANT KNEW ITS CONTENT (NEW CRIMINAL JUSTICE SYSTEM IN THE STATE OF CHIHUAHUA).

Article 64. Exceptions to the principle of publicity.

The debate will be public, but the Court may exceptionally decide, that it take place totally or partially behind closed doors, when:

I. It may affect the integrity of any of the parties, or of any person summoned to participate in it;

Explanation: If the integrity of any of the parties or the public that is inside the hearing room is in danger, due to the existence of indications in order to allow someone to enter, the judge as director of the hearing must deny access to it.

II. Public safety or national security may be seriously affected;

Explanation: We are going to use this example, during a hearing the person in charge of national defense strategies of SEDENA has to appear, that is, a military man, who is going to talk about some activities that are carried out around his position, and strangely a citizen of a state with which Mexico is at war.

Well, this case could be an example of restriction by the Judge due to the citizen of that country with whom Mexico is at war, considering that there could be a risk to national security.

III. Endanger an official, private, commercial or industrial secret, whose undue disclosure is punishable;

Explanation: If the Coca Cola formula were Mexican, and we were in a trial where the owner of the formula had to appear to give some explanations about what it contains, because there is an accusation in which 1000 Mexicans died presumably poisoned by drink coke, this would be an excellent courtroom restraint case.

IV. The Court body deems appropriate;

V. The Best Interest of the Boy and the Girl is affected in terms of what is established by the Treaties and the laws on the matter, or

Explanation: A very illustrative example would be a hearing for a crime of a sexual nature in minors where photographs or videos of the minor are going to be introduced, in this case this restriction would be given to the courtroom to the public.

VI. It is provided for in this Code or in another law. The resolution that decrees any of these exceptions will be founded and motivated, appearing in the record of the hearing.

Article 65. Continuation of public hearing.

Once the cause of exception provided for in the previous article has disappeared, the public will be allowed to enter again and the judge who presides over the trial hearing will briefly report on the essential result of the acts carried out behind closed doors.

Explanation: The hearings are often successive as in the case of oral proceedings, which is why when the cause that originated the restriction to the principle of publicity ceases to exist, such as at the end of the testimony of the minor victim, is that the judge may once again allow access to the general public.

Article 66. Intervention in the hearing.

In the hearings, the accused may defend himself and must be assisted by a law graduate or qualified lawyer that he has chosen or has been designated as Defender.

The Public Prosecutor's Office, the defendant or his Defender, as well as the victim or offended party and his Legal Adviser, may intervene and reply as many times and in the order authorized by the Court.

The defendant or his Defender may speak last, so the Court that presides over the hearing will always ask the accused or his Defender, before closing the debate or the hearing itself, if they want to speak, granted if so.

Explanation: The Mexican criminal procedure does not allow the accused to defend himself alone, so he will necessarily need to be accompanied by a qualified law graduate, without prejudice to the fact that the accused can make his corresponding arguments to defend himself, which must be taken into account by the judge.

If the defendant decides to defend himself, and intends to present a defensive theory different from that of his lawyer, this will surely have negative consequences during the process, since it will surely generate doubts for the judge because of which point of view is the true one, for What is recommended in this situation is that both have arguments in the same direction.

Due to the interventions of the parties in the hearing, the following guidelines must be followed.

1. ***The party that requested the hearing is the one who has the use of voice when initiating it.***

2. ***For each request to the judge, the counterparty will have the right to indicate what is in her interest.***

3. ***Likewise, if the counterparty introduced new information, the party that requested the hearing may make use of a new voice account to argue only based on the new information incorporated.***

4. ***In the same way, the counterparty may use its voice to point out the latest statement by the party requesting the hearing.***

5. ***The discussion is closed.***

If the accused was not favored by the points indicated above for the purpose of concluding the debate, and wants to speak for the last time, he may do so based on what is indicated in this article.

CHAPTER III: COURT RESOLUTIONS

Article 67. Judicial resolutions.

The judicial authority will pronounce its resolutions in the form of judgments and orders. It will issue a sentence to decide definitively and put an end to the procedure and cars in all other cases. Judicial resolutions must mention the ruling authority, the place and date on which they were issued and other requirements that this Code provides for each case.

The orders and resolutions of the Court will be issued orally and will take effect no later than the following day. After their oral issuance, the following must be recorded in writing:

I. Those that resolve on precautionary measures;

II. The arrest and appearance orders;

III. That of detention control;

IV. The connection to process;

V. That of precautionary measures;

VI. The opening of the trial;

VII. Those dealing with final sentences of special processes and trials;

VIII. Those of dismissal, and

IX. Those that authorize investigative techniques with prior judicial control.

In no case, the written resolution must exceed the scope of the one issued orally, it will take effect immediately and must be issued immediately after its issuance orally, without exceeding twenty-four hours, unless otherwise provided.

The resolutions of the collegiate courts will be taken by majority vote. In the event that a Judge or Magistrate does not agree with the decision adopted by the majority, they must issue their individual vote and may do so at the hearing itself, succinctly expressing their opinion and must formulate the written version within the following three days. of his vote to be integrated into the majority decision.

Article 68. Consistency and content of records and sentences.

The records and the judgments must be consistent with the petition or accusation formulated and must concisely contain the background information, the points to be resolved and that they are duly founded and motivated; They must be clear, concise and avoid unnecessary formalities, favoring the clarification of the facts.

Explanation: The resolutions issued by the judge must meet the requests made by the parties, be consistent with what is requested and establish and motivate the reason for their decision.

Article 69. Clarification.

At any time, the Court or at the request of a party, may clarify the obscure, ambiguous or contradictory terms in which the judicial decisions are issued, provided that such clarifications do not imply a modification or alteration of the meaning of the resolution. At the same hearing, after the resolution has been issued and up to three days after the notification, the parties may request clarification, which, if applicable, must be made within the following twenty-four hours. The request will suspend the term to file the resources that proceed.

Explanation: Judicial decisions can be clarified at any time by any of the parties, so that the judge who issued it explains in a simple and coherent way what he meant by it, as well as its scope. .

This request for clarification can be submitted orally after the resolution has been issued or even up to three days after it.

An example could be that the prosecutor of the public ministry has requested link to the process for the crime of injuries and the judge has mistakenly issued an order to link to the process for the crime of qualified injuries, in this case, the defender must request the judge via clarification to clarify this point.

Article 70. Signature.

The written resolutions will be signed by the judges or magistrates. The fact that the judge has not signed it in a timely manner will not invalidate the resolution, provided that the fault is corrected and there is no doubt about his participation in the act that he should have signed, without prejudice to the disciplinary responsibility that may arise.

Article 71. Authentic copy.

An authentic copy is considered to be the document or record of the original of the sentences, or of other procedural acts, which has been certified by the authority authorized for that purpose.

When, for any reason, the original of the judgments or other procedural acts is destroyed, lost or stolen, the authentic copy will have the value of those. To this end, the Court will order whoever has the copy to deliver it, without prejudice to the right to obtain another free of charge when requested. The replacement of the original of the sentence or of other procedural acts may also be carried out using the computer or electronic files of the court.

When the sentence is recorded in computer, electronic, magnetic media or produced by new technologies, the authentication of the authorization of the ruling by the Organ

jurisdiction, it will be recorded through the most appropriate means or form, according to the system used.

Article 72. Restitution and renewal

If there is no copy of the sentences or other procedural acts, the Court will order that they be replaced, for which it will receive from the parties the data and means of proof that evidence their pre-existence and their content. When this is impossible, it will order their renewal, indicating the way to do it.

CHAPTER IV: COMMUNICATION BETWEEN AUTHORITIES

Article 73. General rule of communication between authorities.

The Judicial Body or the Public Ministry, in a well-founded and motivated manner, may request the assistance of another authority for the practice of a procedural act. Said request may be made by any means that guarantees its authenticity. The requested authority will collaborate and process without delay the requests it receives.

Article 74. Procedural collaboration.

The acts of collaboration between the Public Prosecutor's Office or the Police with federal authorities or with any federative Entity, will be subject to the provisions of the Constitution, in this Code, as well as to the provisions contained in other norms and collaboration agreements that have been signed. issued or signed pursuant to it.

Article 75. Requests and requisitions.

When procedural acts have to be carried out outside the territorial scope of the Judicial Body that hears the matter, it will request compliance by means of exhortation, if the requested authority is of the same hierarchy as the applicant, or by means of requisition, if it is lower. . The communication that must be made to non-judicial authorities will be made by any expeditious and secure means of communication that guarantees its authenticity, the provisions of the following article being applicable where appropriate.

Explanation: The procedural acts that must be practiced in another judicial district may be carried out by means of a request for exhortation or requisition.

The warrant occurs when the support of a procedural act is requested from a court of equal rank, such as from a control judge to a control judge.

The requisition is given when a request is made from a higher-ranking court to a lower-ranking court, such as a magistrate or a control judge.

Article 76. Use of the media.

For the sending of official letters, letters rogatory or requisitions, the Jurisdictional Body, the Public Ministry, or the Police, may use any suitable and agile means of communication that offers reasonable conditions of security, authenticity and subsequent confirmation if necessary. , and the action to be carried out must be stated clearly, the name of the defendant, if possible, the crime in question, the single case number, as well as the basis for the order and, if necessary, the notice that the information will be sent: the official letter of collaboration and the request or request to ratify the message. The requesting authority must make sure that the person requested received the communication that was addressed to him and the recipient will decide what is relevant, proving the origin of the request and the urgency of his attention.

Article 77. Term for compliance with letters rogatory and requisitions.

The warrants or requisitions will be provided within the twenty-four hours following their receipt and will be dispatched within the following three days, unless the actions to be carried out necessarily require more time, in which case, the Control Judge will establish whoever deems convenient and will notify the applicant, indicating the existing reasons for the extension. If the requested Control Judge considers that the practice of the requested act is not appropriate, he will inform the requesting party within twenty-four hours of receipt of the request, expressly indicating the reasons he has for refraining from complying with it.

If the exhorted or requested control judge considers that the requested act should not be completed, because the matter does not fall within his competence or if he has doubts about its origin, he may contact the exhorting or requesting court, he will hear the Public Prosecutor's Office and will decide within the following three days, promoting, where appropriate, the respective competition.

When an arrest warrant is fulfilled, the person exhorted or requested will place the detainee, without any delay, at the disposal of the jurisdictional body that issued the order. If it were not possible to place the detainee immediately at the disposal of the exhorting or requesting party, the requested party will give a hearing to the Public Prosecutor's Office so that it formulates the imputation; it will decide on the precautionary measures that are requested and will resolve its connection to the process, will send the proceedings and, where appropriate, the detainee, the court that has issued the warrant within twenty-four hours following the determination of substance that it adopts.

When a Control Judge cannot comply with the warrant or requisition, because the person or things that are the object of the proceeding are in another jurisdiction, they will refer it to the Control Judge of the place where the person or things are located, and they will do so know the exhorting or requesting party within the following twenty-four hours. If the control Judge who receives the warrant or requisition from the judge originally called upon, decides to vent it, once done, he will return it directly to the warrantee.

The exhorted or requested authorities will forward the proceedings or procedural acts carried out or requested by any means that guarantees their authenticity.

Article 78. Requests from foreign courts.

Requests from foreign courts must be processed in accordance with Title XI of this Code.

Any application received from abroad in a language other than Spanish must be accompanied by its translation.

Article 79. International letters rogatory that require approval.

The international letters rogatory that are received will only require homologation when it implies coercive execution on persons, goods or rights. The letters rogatory related to

notifications, receipt of evidence and other matters of mere procedure will be processed without forming an incident.

Article 80. Procedural acts abroad.

The letters rogatory that are sent abroad will be official written communications that will contain the request to carry out the necessary actions in the procedure in which they are issued. said

Communications will contain the necessary data and information, the records and other annexes coming as the case may be.

The letters rogatory will be transmitted to the required jurisdictional body through the official consular or diplomatic agents, or by the competent authority of the requesting or requested State according to the case.

The practice of proceedings in foreign countries may be entrusted to the consular officials of the Republic by means of office.

Article 81. Delay or rejection of requirements.

When the completion of a requirement of any nature is unjustifiably delayed or rejected, the requesting authority may contact the hierarchical superior of the authority that must complete said requirement so that, if deemed appropriate, order or manage its immediate processing.

CHAPTER V: NOTIFICATIONS AND SUMMONS

Article 82. Forms of notification.

Notifications will be made personally, by list, podium or judicial bulletin as appropriate and by edicts:

Personally they may be:

a) In Hearing;

Explanation: As a general rule, notifications will be made at a hearing, so at that time the notification will be considered legally made..

b) By any of the technological means indicated by the interested party or his legal representative;

Explanation: When the parties grant their consent so that they can be notified by electronic means, such as email, this will take legal effect.

c) In the facilities of the Jurisdictional Body, or

Explanation: In the same way, the parties can voluntarily go to the court to be notified and it will generate legal effects.

d) At the domicile established for this purpose. Those carried out at home will be made in accordance with the following rules:

e) The notifier must make sure that it is the indicated address. Immediately afterwards, the presence of the interested party or his legal representative will be required. Once any of them has identified himself, he will give him a copy of the order or the resolution that must be notified and will obtain his signature, establishing the data of the official document with which he is identified. Likewise, the identification data of the public servant who practices it must be established in the notification act;

f) If the interested party or his legal representative is not found in the first notification, the notifier will leave a summons with any person who is at the address, so that the interested party waits at a fixed time on the following business day. If the person to be notified does not attend the summons, the notification will be understood with any person who is at the address where the procedure is carried out and, if he refuses to receive it or if the address is closed, it will be made. by instructions that will be posted in a visible place at home, and

g) In all cases, a detailed record of the procedure that is carried out must be drawn up; II. List, Podium or Judicial Bulletin as appropriate, and

By edicts, when the identity or domicile of the interested party is unknown, in which case it will be published for a single occasion in the official publication medium of the

Federation or of the Federative Entities and in a newspaper with national circulation, which must contain a summary. of the resolution to be notified.

The notifications provided for in section I of this article will take effect the day after they have been made and those made in sections II and III will take effect the day after their publication.

This thesis will help to better interpret this article:

PERSONAL NOTIFICATIONS IN THE ACCUSATORY CRIMINAL JUSTICE SYSTEM. THOSE CARRIED OUT AT THE HOME THAT THE COURT ESTABLISHES FOR SUCH PURPOSE, SHOULD BE CARRIED OUT WITHOUT DEMANDING GREATER REQUIREMENTS THAN THOSE ESTABLISHED IN ARTICLE 82, SECTION I, ITEM D), OF THE NATIONAL CODE OF CRIMINAL PROCEDURES.

The aforementioned precept establishes the formalities to follow when a notification is made at the address indicated by the court for that purpose; hence, if the notifier made sure that it is the indicated address; that since the interested party was not at home, he left a summons posted on the access door (because no one responded to the call), in which he stated that the person sought should wait for him the following day at the indicated time; that since the wanted person did not respond to the summons and no one responded to the call he made when he knocked on the door on various occasions, he proceeded to make it through instructions that he left posted on the door to the home, which is evidence that it was done legally. Therefore, if the District Judge who heard the amparo, when analyzing the legality of the notification, requires that the notifier must indicate the exact location of the domicile, its description, as well as that the instructions must contain the warning decreed in the order to to notify, among others, it is estimated that it demanded greater requirements than those established in article 82, section I, subsection d), of the National Code of Criminal Procedures.

Article 83. Means of notification.

The acts that require the intervention of the parties may be notified by fax and email, and a copy of the delivery and receipt must be printed, and added to the registry, or it will be saved in the existing electronic system for this purpose; Likewise, the parties may be notified by telephone or any other means, in accordance with the provisions set forth in the organic laws or, where appropriate, the agreements issued by the competent bodies, and a record of this must be recorded.

The use of the means referred to in this article must ensure that the notifications are made within the established time and that the content of the resolution or the ordered proceeding is clearly, accurately and completely transmitted.

In the notification of judicial decisions, the use of the digital signature may be accepted.

Article 84. General rule on notifications.

The resolutions must be personally notified to the person concerned, within twenty-four hours after they were issued. The persons who appear at the hearing where the resolution is issued or the respective proceedings are carried out will be considered notified.

When the notification must be made to a person with a disability or any other circumstance that prevents them from understanding the scope of the notification, it must be done in the terms established in this Code.

Article 85. Place for notifications.

When appearing in the procedure, the parties must indicate their domicile within the place where it is carried out and, where appropriate, state the most convenient way to be notified according to the means established in this Code.

The Public Ministry, Defender and Legal Adviser, when the latter are public, will be notified in their respective offices, provided that they are within the jurisdiction of the Court that orders the notification, unless they have submitted a request to be notified by fax, by email, phone or any other half. In the event that the offices are outside the jurisdiction, they must indicate their domicile within said jurisdiction.

If the accused is detained, he will be notified at the place of his detention.

The parties that do not indicate an address or the means to be notified or do not report their change, will be notified in accordance with what is indicated in section II of article 82 of this Code.

Explanation: The parties, such as the private defender or the private legal advisor, must present a procedural domicile in the place where the criminal process is being carried out.

In the case of parties of public origin, such as public ministries and public defenders, they are granted an exception rule, where they may, if they do not have a procedural domicile, provide one that is outside of it.

This isolated thesis helps to better interpret this article:

NOTIFICATIONS TO THE COMPLAINANT IN THE ACCUSATORY CRIMINAL SYSTEM. THE FACT THAT WHEN ATTENDING THE INTERVIEW WITH THE PUBLIC MINISTRY, YOU PROVIDE YOUR EMAIL AS PERSONAL DATA, DOES NOT IMPLY THAT YOU HAVE EXPRESSED YOUR WILL TO CHANGE THE FORM OF NOTIFICATION INDICATED IN YOUR COMPLAINT, BECAUSE THAT MEANS IS THE MOST CONVENIENT FOR YOU TO BE NOTIFIED. Although it is true that according to the first paragraph of article 85 of the National Code of Criminal Procedure, the complainant must indicate an address to receive notifications within the place where the criminal procedure is carried out (for being part of it), it is also true which authorizes him so that, if applicable, he manifests himself on the most convenient

way to be notified in accordance with the means established in said code, among them, electronically, but this manifestation must be in such a way that it allows considering that his will is to opt for this new form of notification and renounce the originally indicated (as it is considered more convenient), and not only assume that said complainant, when attending the interview with the Public Ministry, has provided, among other personal data, his email email, as part of the dynamics of that proceeding. Circumstance that is also strengthened in the second paragraph of the aforementioned numeral, because although it establishes that the Public Ministry, public defenders and legal advisers, will be notified in their respective offices, as long as they are within the jurisdiction of the body that orders them, also gives them the possibility of changing the form of notification, but this will occur once those named expressly submit their request to be notified by other means; from which it is noted that, in both cases, the statement must be in such a way that it leaves no doubt about the intention to change the notification route that had originally been indicated or had.

Article 86. Notifications to Defenders or Legal Advisers.

When a Defender or Legal Adviser is appointed and these are individuals, notifications must be addressed to them, without prejudice to notifying the accused and the victim or offended party, as the case may be, when the law or the nature of the act so require.

When the accused has several Defenders, the common representative must be notified, if there is one, without prejudice to others going to the office of the Public Prosecutor's Office or the jurisdictional body to be notified. The same provision shall apply to Legal Advisers.

NOTIFICATIONS IN THE ACCUSATORY CRIMINAL SYSTEM. IT IS ENOUGH THAT THEY ARE CARRIED OUT TO ONE WHO HAS RECOGNIZED HIS PERSONALITY AS A LEGAL ADVISOR, TO UNDERSTAND THAT THEY WERE CARRIED OUT WITH THE VICTIM OR OFFENDER OF THE CRIME. The victim or victim of the crime has the right to intervene at any stage of the criminal procedure by himself or through his legal advisor, who is empowered to guide, advise or legally intervene in the procedure. In this understanding, if it is noted that a certain person is recognized as a legal adviser, he must be considered as a formal party in the procedure, for which reason he has various powers, including hearing and receiving notifications; therefore, it is sufficient that a notification made to the latter should be understood to be made to the victim.

Article 87. Special form of notification.

The notification made by electronic means will take effect the same day that the system confirms that you received the corresponding electronic file. Likewise, it may be notified through other systems authorized in the law of the matter, provided that they do not cause defenselessness. It may also be notified by certified mail and the term will run from the next business day on which the notification was received.

Article 88. Nullity of the notification.

The notification may be void when it causes defenselessness and the formalities provided for in this Code are not fulfilled.

Explanation: if the notification was not made in accordance with the rules of this code, it cannot be considered legally made, and therefore its annulment can be requested before the control judge.

A very common example is when the notifier leaves the summons stuck on the fence and does not return the next day, so this action contravenes the provisions of article 82 section I, subparagraph d) of this code, and therefore, when carried out In this way, it must be declared null, as long as it causes defenselessness.

Article 89. Validity of the notification.

If, despite not having made the notification in the manner provided for in this order, the person who must be notified is aware of it, it will take legal effect.

Article 90. Summons.

Every person is obliged to appear before the jurisdictional body or before the Public Ministry, when summoned. The President of the Republic and the public servants referred to in the first and fifth paragraphs of article 111 of the Constitution, the Legal Counsel of the Executive, the magistrates and judges and physically disabled persons, either due to their age, are exempt from this obligation, due to serious illness or any other that makes it difficult to appear.

When it is necessary to examine the public servants or the persons indicated in the previous paragraph, the Jurisdictional Body will provide that said testimony be released in the trial by remote reproduction systems of images and sounds or any other means that allows their transmission, in session private.

The summons to whoever performs a job, position or commission in the public service, other than those indicated in this article, will be made through the respective hierarchical superior, unless to guarantee the success of the appearance it is required that the summons be made in a different way.

In the case of any person who has served as a public servant and it is not possible to locate them, the Jurisdictional Body will request the institution where they have provided their services, the address information, telephone number, and, where appropriate, the necessary data for their location, in order to appear at the respective audience.

Article 91. Manner of making summons.

When the presence of a person is necessary to carry out a procedural act, the authority that knows the matter must order his summons by official letter, certified mail or telegram

with notice of delivery to the address provided, at least with forty-eight hours in advance. anticipation of the event.

A witness or expert who has expressly expressed his wish to be summoned by this means may also be summoned by telephone, provided that he has provided his number, notwithstanding that if it is not possible to make such a summons, it can be done by one of the other means indicated in this Chapter.

In the event that the parties offer a witness or expert as evidence, they must present it on the day and time indicated, unless they request the Court to be summoned through them by virtue of the fact that they are unable to appear due to the nature of the circumstances.

In the event that the parties, being obliged to present their witnesses or experts, do not comply with said appearance, they will be deemed to have withdrawn from the evidence, unless they justify the impossibility of presenting them, within the following twenty-four hours. to the date set for the appearance of their witnesses or experts.

The citation must contain:

I. The authority and domicile before which it must appear;

II. The day and time you must appear;

III. The object thereof;

IV. The procedure from which it is derived;

V. The signature of the authority that orders it, and

VI. The warning of the imposition of a means of enforcement in case of non-compliance.

Explanation: This article will be explained 100% practical as follows:

1. ***If you receive a summons from the prosecutor or the public ministry for you to appear in less than 48 hours from the time it was delivered to you, the notification is flawed (your lawyer will enforce it)***

2. ***When you want to present a witness or expert to testify at a hearing, you must bring it yourself, and if for some reason you cannot get him to appear, you can ask the court to do so, justifying your inability to present it yourself.***

3. ***The summons must contain the six points established in this article, if it does not contain them, you can ask the judge or the prosecutor to clarify these points and issue you a new summons.***

Article 92. Subpoena to the accused.

Whenever the presence of the accused is required to carry out a procedural act by the Court, as appropriate, it will summon him together with his Defender to appear.

The subpoena must contain, in addition to the requirements indicated in the previous article, the address, the telephone number and, where appropriate, the necessary data to communicate with the authority that orders the subpoena.

Article 93. Communication of actions of the Public Ministry.

When in the course of an investigation the Public Prosecutor's Office must notify a person of any action, it may do so by any means that guarantees the reception of the message. The provisions of this Code will be applicable, as appropriate.

CHAPTER VI: DEADLINES

Article 94. General rules.

The procedural acts will be fulfilled within the established deadlines, in the terms that this Code authorizes.

The terms subject to judicial discretion will be determined according to the nature of the procedure and the importance of the activity that must be carried out, taking into account the rights of the parties.

Saturdays, Sundays or days that are determined non-working days by the applicable legal regulations will not be computed, except in the case of acts related to precautionary measures, placing the accused at the disposal of the Court, resolving the legality of the detention, formulation of the accusation, decide on the origin of the precautionary measures in its case and decide on the origin of its link to the process, for this purpose all days will be computed as working days.

With the exception of the exception provided for in the previous paragraph, the other terms that expire on a non-business day will be considered as extended until the following business day. The terms established in hours will run from moment to moment and those established in days from the day the notification takes effect.

Article 95. Waiver or abbreviation.

The parties in whose favor a term has been established may waive it or consent to its abbreviation by means of an express statement. In the event that the term is common to the parties, to proceed in the same terms, all interested parties must express their will in the same sense.

When it is the Public Prosecutor's Office that waives a term or consents to its abbreviation, the victim or offended party must be heard to express what is in her interest.

Explanation: It is very common within the criminal process that agreements are reached between the parties to settle a conflict, such as that a pardon has been granted in favor of the accused, which results in the criminal action being extinguished, and therefore therefore, the criminal case is dismissed.

However, the dismissal for forgiveness is appealable, as indicated in article 467 section VI of this code, but since everyone is in agreement with the effects of the forgiveness, they can expressly waive the 5-day period granted by the hearing before the end of the hearing. procedural law for the purpose of filing an appeal.

This thesis helps to better interpret this article:

CONVICTIONS GIVEN IN THE ABBREVIATED PROCEDURE. THE FACT THAT THE COMPLAINT STATES HIS WILL TO WAIVE HIS RIGHT TO APPEAL AND THE

PERIOD TO BRING THIS APPEAL, IN TERMS OF ARTICLES 95 AND 460 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, DOES NOT CONSTITUTE AN EXCEPTION TO THE PRINCIPLE OF FINALITY, FOR EFFECTS OF THE ORIGIN OF THE DIRECT AMPARO TRIAL. Article 95 of the National Code of Criminal Procedures provides that procedural deadlines may be waived; However, this does not imply a waiver of the appeal that, if applicable, one wants to promote, since it could be filed on the day of notification of the judgment, that is, before the start of the legal term established for the aforementioned filing, in accordance with the systematic interpretation of articles 82 and 471, first paragraph, of the aforementioned legal system. On the other hand, article 460 of the code itself establishes the loss of the right to appeal a resolution when it has been expressly consented to, but this cannot be considered as the right to waive an ordinary means of defense either, since the precept only provides which It is the logical-legal consequence that the act of consenting to a certain resolution entails. In this sense, it is concluded that the National Code does not explicitly establish the possibility of waiving the right to appeal the conviction handed down in the abbreviated procedure and, for that reason, even when the complainant has expressed his willingness to waive his right to appeal and the term to do so cannot be considered as constituting the exception to the principle of finality, contained in article 170, section I, third paragraph, of the Amparo Law, that is, that the criminal procedure law allows the waiver of the ordinary resources to make the direct amparo proceeding immediately.

Article 96. Replacement of the term.

The party that has not been able to observe a term for reasons not attributable to him, may request, in a well-founded and motivated manner, its total or partial replacement, in order to perform the omitted act or exercise the power granted by law, within twenty-four hours following that in which the injured party has reliable knowledge of the act whose repayment of the term is sought. The Court may order the replacement once it has heard the parties.

CHAPTER VII: NULLITY OF PROCEDURAL ACTS

Article 97. General principle.

Any act carried out in violation of human rights will be void and cannot be sanitized or validated and its nullity must be declared by the Court at the time of warning or at the request of a party at any time.

Acts carried out in contravention of the formalities provided for in this Code may be declared void, unless the defect has been corrected or validated, in accordance with the provisions of this Chapter.

Explanation: The procedural code clearly establishes a repudiation of any act of investigation that has been collected in violation of fundamental rights, which will be null without further discussion than its accreditation.

On the other hand, there are acts that may have been carried out without observing the formalities of this code, such as having carried out a recognition by photography without following the rules for its realization to the letter, where in certain cases, it may be cleared or validated. the same, that is, rectify the error and with it that the act is legal and can be used and valued within the criminal process.

This thesis helps to better interpret this article:

NULLITY OF PROCEDURAL ACTS IN THE ACCUSATORY CRIMINAL SYSTEM. IN ACCORDANCE WITH ARTICLE 97 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, THE COURT HEARING THE MATTER – AND NOT ITS SUPERIOR – IS THE ONE WHO MUST MAKE THE CORRESPONDING DECLARATION IN THE RELATIVE PROCEDURE. In accordance with the aforementioned precept, the acts carried out in violation of human rights will be null and cannot be sanitized or validated, that is, it is an absolute nullity, which must be declared by the court at the time of warning or at the request of a party. , whenever. Likewise, the acts carried out in contravention of the formalities that the same code establishes, can be sanitized or validated, which originates a relative nullity. Pursuant to the foregoing, when it comes to the nullity of acts in the procedure for violation of the fundamental right to have a translator or interpreter, as well as the right to an adequate and effective technical defense, it falls within the cases of absolute nullity, since which refers to actions carried out in violation of the fundamental rights provided for in articles 2o. and 20, section B, section VIII, of the Political Constitution of the United Mexican States and, therefore, cannot be validated or sanitized, so they must be declared void ex officio by the court at the time of warning, or at the request of part at any time; Hence, the procedure for the declaration of nullity of procedural acts in the accusatory criminal system must be carried out before the judicial authority that is hearing the matter at that time and it is this authority that must decide, and not through an autonomous procedure initiated directly before the High Court.

Article 98. Request for a declaration of nullity on acts carried out in contravention of the formalities.

The request for a declaration of nullity must be founded and motivated and submitted in writing within the two days following that in which the injured party has reliable knowledge of the act whose invalidation is sought. If the vice occurred in a performance carried out in a hearing and the affected party was present, it must be presented orally before the end of the same hearing.

In the event that the act declared void is found in the cases established in the final part of article 101 of this Code, its replacement will be ordered.

Article 99. Sanitation.

Acts executed in breach of the formalities provided for in this Code may be sanitized, replacing the act, rectifying the error or performing the omitted act at the request of the interested party.

The judicial authority that finds a remediable formal defect in any of its actions will notify the interested party and will grant them a term to correct it, which will not be more than three days. If the act is not cleared within said term, the Court will resolve the relevant matter.

The judicial authority may correct at any time or at the request of a party, the purely formal errors contained in its actions or resolutions, always respecting the rights and guarantees of the parties involved.

It will be understood that the act has been sanitized when, despite the irregularity, it has achieved its purpose with respect to all interested parties.

Article 100. Validation.

Acts carried out in breach of the formalities provided for in this Code that affect the Public Ministry, the victim or offended party or the accused, will be validated when:

I. The parties have accepted, expressly or tacitly, the effects of the act;

II. None of the parties have requested their sanitation in the terms provided in this Code, or

III. Within twenty-four hours after the act was carried out, the party that was not present or participated in it does not request its sanitation.

In the event that, due to the special circumstances of the case, it had not been possible to notice in a timely manner the defect in the performance of the procedural act, the interested party must request, in a justified manner, the sanitation of the act, within twenty-four hours after becoming aware of it. of the same.

The foregoing, as long as the fundamental rights of the accused or the victim or offended party are not affected.

Article 101. Declaration of nullity.

When it has been impossible to sanitize or validate an act, at any time the Court, at the request of a party, in a well-founded and motivated manner, must declare its nullity, indicating in its resolution the effects of the declaration of nullity, and must specify the acts to those that reach nullity due to their relationship with the annulled act. The Court of prosecution may not declare the nullity of acts carried out in the stages prior to the trial, except for the exceptions provided for in this Code.

To decree the nullity of an act and order its replacement, the simple violation of the rule is not enough, but it is also required that:

I. A real affectation has been caused to any of the parties, and

II. That the replacement is essential to guarantee compliance with the rights or interests of the subject affected.

Article 102. Legitimate subjects.

Only the intervener harmed by a defect in the procedure may request the declaration of nullity, provided that he did not contribute to causing it.

Explanation: The declaration of nullity does not proceed, but at the request of a party, so it can only be promoted by those who are affected by being incorporated evidence with violation of fundamental rights.

Article 103. Test production expenses.

In the case of expert evidence, the Court will order, at the request of a party, the appointment of experts from public institutions, who will be obliged to carry out the corresponding expertise, provided that there is no material impediment to it.

Explanation: In order to guarantee the procedural equality that must prevail in the criminal process in its aspect of equality of arms for the purpose of proving the factual propositions of each party and therefore their theory of the case, it is that the control judge at the request of party, may order to carry out expert opinions within the criminal process.

The purpose is precisely that for reasons of various kinds, such as economics, the defendant who directly benefits from the content of this article can carry out and request the necessary expert opinions in order to have an adequate defense within the criminal process.

CHAPTER IX: ENFORCEMENT MEANS

Article 104. Imposition of means of enforcement.

The Judicial Body and the Public Prosecutor's Office may have the following means of enforcement to comply with the acts that they order in the exercise of their functions:

I. The Public Ministry will have the following enforcement measures:

a) Reprimand;

b) A fine of twenty to one thousand days of the minimum wage in force at the time and place in which the offense that warrants a measure of urgency is committed. In the case of day laborers, laborers and workers who receive the minimum wage, the fine shall not exceed one day's salary and in the case of non-salaried workers, one day after their entry;

c) Help from the public force, or

d) Arrest for up to thirty-six hours;

Explanation: The ministerial administrative body, obviously having the character of authority, must work with complete objectivity, but also quickly, which is why, evidently, in its work as an investigative body, it has the obligation to collect evidence to bring criminal action at the time. .

That is why in the event that the authorities or persons who are required to provide information or appear before the public prosecutor and unjustifiably do not make the request, the ministerial body may at any time assert the means of urgency indicated in the part of above.

II. The Court will have the following enforcement measures:

a) Reprimand;

b) A fine of twenty to five thousand days of the minimum wage in force at the time and place in which the offense that warrants a measure of urgency is committed. In the case of day laborers, laborers and workers who receive the minimum wage, the fine shall not exceed one day's salary and in the case of non-salaried workers, one day after their entry;

c) Help from the public force, or

d) Arrest for up to thirty-six hours.

The jurisdictional body may also order the expulsion of persons from the facilities where the proceeding is carried out.

The resolution that determines the imposition of enforcement measures must be founded and motivated.

The imposition of the arrest will only be appropriate when there has been a warning of the same and this is duly notified to the affected party.

The Judicial Body and the Public Prosecutor's Office may give a hearing to the competent authorities so that the responsibilities that may proceed in their case are determined under the terms of the applicable legislation.

Explanation: The ministerial administrative body, obviously having the character of authority, must work with complete objectivity, but also quickly, which is why, evidently, in its work as an investigative body, it has the obligation to collect evidence to bring criminal action at the time. .

That is why in the event that the authorities or persons who are required to provide information or appear before the public prosecutor and unjustifiably do not make the request, the ministerial body may at any time assert the means of urgency indicated in the part of above.

the same logic applies to the court.

This thesis helps to better interpret the content of this article:

ENFORCEMENT MEASURES PROVIDED FOR IN ARTICLE 104, SECTION II, OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. FOR ITS IMPOSITION TO BE LEGAL, A WARNING MUST BE PROVIDED, AS A GENERAL RULE. Articles 14, second paragraph and 16, first paragraph, of the Political Constitution of the United Mexican States protect the rights of legality -which consists in that all authorities must adjust their actions to the provisions that regulate the powers conferred by law- and legal security of the people – which protects their knowledge of both the normative regulation and the behavior of the authorities, to ensure that this is not arbitrary and avoid defenselessness. For its part, article 104, section II, of the National Code of Criminal Procedures lists the means of enforcement that the court can use to enforce its determinations, without specifying any procedure for its application, including articles 57, last paragraph. and 59, allow them to be applied indistinctly. From the legislative process that gave rise to this code, there is no consideration of enforcement measures. Thus, a literal interpretation of article 104, section II, would lead to the conclusion that a warning is only required to impose an arrest, in terms of its penultimate paragraph. However, the consistent interpretation of said rule, in light of the cited constitutional articles, allows us to conclude that, as a general rule, the warning is an essential element prior to imposing any enforcement measure, because only through that warning of the jurisdictional authority, the person is able to know the legal consequence of his default. This hermeneutic result protects in a broader way the rights of legality and legal certainty, in terms of article 1, second paragraph, of the Federal Constitution and, in addition, is consistent with what was resolved by the First Chamber of the Supreme Court of Justice of the Nation in the contradictions of theses 46/99-PS and 125/2007-PS, from which the jurisprudence 1a./J. 20/2001, under the heading: "ENFORCEMENT MEASURES. THE A WARNING IS A MINIMUM REQUIREMENT

THAT THE AUTHORITY MANDATE MUST MEET FOR THE APPLICATION OF THEM TO BE LEGAL (LEGISLATIONS OF THE FEDERAL DISTRICT AND OF THE STATES OF NUEVO LEÓN AND CHIAPAS)." and 1a./J. 60/2008, under the heading: "ARREST AS A MEASURE OF ENFORCEMENT. THEIR TEMPORALITY SHOULD NOT NECESSARILY BE DETERMINED FROM THE WARNING." Furthermore, deeming that the warning is not a requirement that must be mediated before imposing an enforcement measure, would imply equating them to violations for non-compliance with legal provisions, which is not admissible if they are considers that they participate of a different nature, since these are specific legal consequences that the legislative body establishes against certain conducts and that are known to people since the entry into force of the respective legal system, while enforcement measures are tools of the judicial authority so that its specific orders are complied with, in case of contempt of which it has the power to choose at its discretion and impose a sanction from among those limited by law; and it is precisely this discretion to determine the enforcement measure applicable to each case, what that fosters legal insecurity in the defendants, which is only corrected with a prior warning. The foregoing is consistent with the reasoning of the First Chamber of the Supreme Court of Justice of the Nation in the contradiction of thesis 431/2013, from which jurisprudence 1a./J. 35/2014 (10a.), title and subtitle: "FINE PROVIDED FOR IN ARTICLE 260, SECTION IV, OF THE LAW OF AMPARO. ITS IMPOSITION BY THE COLLEGIATE CIRCUIT COURT IS NOT CONDITIONED ON PRIOR REQUEST OR WARNING TO THE RESPONSIBLE AUTHORITY IN THE DIRECT AMPARO TRIAL (AMPARO LEGISLATION IN FORCE AS OF APRIL 3, 2013)."

TITLE V: SUBJECTS OF THE PROCEDURE AND THEIR ASSISTANTS

CHAPTER I: COMMON PROVISIONS

Article 105. Subjects of criminal proceedings.

The following are subject to criminal proceedings:

I. The victim or offended;

II. The Legal Adviser;

III. The defendant;

IV. The Lawyer of the defendant;

V. The Public Ministry;

VI. The Police;

VII. The Court, and

VIII. The supervisory authority for precautionary measures and the conditional suspension of the process.

The subjects of the procedure that will have the quality of party in the procedures provided for in this Code, are the accused and his Defender, the Public Ministry, the victim or offended party and his Legal Adviser.

Explanation: It is important to point out that in this case the police, the court and the supervisory authority for precautionary measures and the conditional suspension of the process are not parties to the process.

The foregoing by virtue of the fact that it is a party who can make requests in the process, and in the case of the court, it does not have such quality since the function is precisely to resolve the requests made by the parties.

Article 106. Reservation on identity.

In no case may confidential information relating to the personal data of the subjects of the criminal procedure or of any person related or mentioned in it be referred to or communicated to non-legitimized third parties. Any violation of the duty of confidentiality by public servants will be sanctioned by the applicable legislation. In the cases of people removed from the action of justice, the publication of the data that allows the identification of the accused to execute the judicial order of arrest or appearance will be admitted.

Article 107. Probity.

The subjects of the procedure that intervene as a party must conduct themselves honestly, avoiding dilatory approaches of a formal nature or any abuse in the exercise of the powers or rights that this Code grants them. The Court will ensure that the regularity of the procedure, the exercise of powers or rights in terms of law and good faith are respected at all time***s.***

Explanation: This principle basically regulates the duty of the parties not to turn strategic litigation into meaningless litigation, where they promote obviously inappropriate requests or incidents.

CHAPTER II: VICTIM OR OFFENDED

Article 108. Victim or offended.

For the purposes of this Code, the victim of the crime is considered to be the passive subject who suffers directly on his person the affectation produced by the criminal conduct. Likewise, the physical or moral person who owns the legal right injured or endangered by the action or omission provided for in criminal law as a crime will be considered offended.

In crimes whose consequence was the death of the victim or in the event that the latter could not personally exercise the rights that this Code grants, the offended party will be considered, in the following order, the spouse, concubine or common-law husband, the cohabitant, the relatives by consanguinity in the straight line ascending or descending without limitation of degree, by affinity and civil, or any other person who has an affective relationship with the victim.

The victim or offended party, in terms of the Constitution and other applicable ordinances, will have all the rights and prerogatives recognized therein.

Article 109. Rights of the victim or offended.

In the procedures provided for in this Code, the victim or offended shall have the following rights:

I. To be informed of the rights that the Constitution recognizes in his favor;

Explanation: This obligation is primarily the victim advisor, however in the absence of this, it will be the prosecutor who has the obligation to express in detail all the rights that the victim and/or offended have.

It is important that the victim and/or prosecutor advisor have the talent to be able to explain in the most didactic way what each right established in the laws where they are established means.

II. That the Public Ministry and its auxiliaries, as well as the Judicial Body, facilitate their access to justice and provide them with the services that are constitutionally entrusted to them with legality, honesty, loyalty, impartiality, professionalism, efficiency and effectiveness and with due diligence;

Explanation: It is of the utmost importance that the Public Prosecutor's Office, as long as the victim's request is pertinent, make the entire justice system available to them in order to fully guarantee the rights of the victim, in no case should discrimination be made. the services that the Attorney General's Office has and the faculties that it has for purely subjective reasons.

The court body will likewise have the same obligations in relation to the victim.

III. To have information about the rights that exist for their benefit, such as being cared for by personnel of the same sex, or of the sex that the victim chooses, when required, and receiving emergency medical and psychological attention from the commission of the crime, as well as legal assistance through a Legal Adviser;

IV. To communicate, immediately after the crime has been committed, with a family member, and even with their legal adviser;

V. To be informed, when so requested, of the development of the criminal procedure by his Legal Adviser, the Public Prosecutor's Office and/or, where appropriate, by the Judge or Court;

Explanation: This right becomes very relevant during the procedure since, as has been indicated, the victim must at all times be informed by the lawyers in simple and digestible language for those who are not experts in criminal law, that is, they must to be explained with the most common and simple language about the rights to which you are entitled and access.

VI. To be treated with respect and dignity;

VII. To have a free legal advisor at any stage of the procedure, under the terms of the applicable legislation;

Explanation: From the moment the criminal news is received and in particular since a complaint or complaint is filed, the victim advisor has the right to have a lawyer who asserts his rights and presents all the proceedings and promotions within the deadlines established by law.

VIII. To receive treatment without discrimination in order to avoid violating human dignity and annulling or impairing their rights and freedoms, so that the protection of their rights will be made without any distinction;

IX. To access justice promptly, free of charge and impartially regarding their complaints or complaints;

Explanation: Access to justice in a prompt, free and impartial manner does not necessarily refer to an exact term of time in which the matter must be resolved, since what this point tries to establish is precisely.

X. To participate in alternative dispute resolution mechanisms;

XI. To receive free assistance from an interpreter or translator from the time the complaint is filed until the conclusion of the criminal proceeding, when the victim or offended party belongs to an ethnic group or indigenous people or does not know or understand the Spanish language;

XII. In case of having a disability, to make the adjustments to the criminal procedure that are necessary to safeguard your rights;

XIII. To be provided migratory assistance when you have another nationality;

XIV. To receive all the pertinent data or evidence available to him, both in the investigation and in the process, to carry out the corresponding proceedings, and to intervene in the trial and file the appeals in the terms established by this Code;

XV. To intervene in the entire procedure on their own or through their Legal Adviser, in accordance with the provisions of this Code;

XVI. To be provided with protection when there is a risk to his life or personal integrity;

XVII. To request the carrying out of investigative acts that correspond to it, unless the Public Prosecutor considers that it is not necessary, having to found and motivate its refusal;

XVIII. To receive medical and psychological attention or to be channeled to institutions that provide these services, as well as to receive special protection of their physical and mental integrity when requested, or when dealing with crimes that require it;

XIX. To request protection measures, precautionary measures and precautionary measures;

xx. To request the transfer of the authority to the place where they are, to be questioned or participate in the act for which they were summoned, when their age, serious illness or some other physical or psychological impossibility makes it difficult for them to appear, to which end must request the waiver, by itself or by a third party, in advance;

XXI. To challenge, on their own or through their representative, the omissions or negligence committed by the Public Ministry in the performance of their investigative functions, under the terms provided in this Code and in the other applicable legal provisions;

XXII. To have access to the investigation records during the procedure, as well as to obtain a free copy of these, unless the information is subject to reservation as determined by the Court;

XXIII. To be restored in their rights, when these are accredited;

XXIV. To be guaranteed the repair of the damage during the procedure in any of the forms provided in this Code;

XXV. To repair the damage caused by the commission of the crime, being able to request it directly from the jurisdictional body, without prejudice to the fact that the Public Ministry requests it;

XXVI. To safeguard their identity and other personal data when they are minors, in the case of crimes of violation against freedom and normal psychosexual development, family

violence, kidnapping, human trafficking or when in the opinion of the Judicial Body it is necessary to their protection, safeguarding in all cases the rights of the defense;

XXVII. To be notified of the withdrawal of the criminal action and of all the resolutions that end the procedure, in accordance with the rules established in this Code;

XXVIII. To request the reopening of the process when its suspension has been decreed, and

XXIX. Others established by this Code and other applicable laws.

In the event that the victims are persons under eighteen years of age, the Judicial Body or the Public Ministry will take into account the principles of the best interest of children or adolescents, the prevalence of their rights, their comprehensive protection and the rights enshrined in the Constitution, in the Treaties, as well as those provided for in this Code.

For crimes involving violence against women, all the rights established in their favor by the General Law on Women's Access to a Life Free of Violence and other applicable provisions must be observed.

Article 110. Appointment of Legal Adviser.

At any stage of the procedure, the victims or offended parties may designate a legal adviser, who must be a law graduate or a qualified lawyer, who must accredit his profession from the beginning of his intervention by means of a professional license. If the victim or offended cannot designate a particular one, they will have the right to one.

When the victim or victim belongs to an indigenous people or community, the legal adviser must have knowledge of their language and culture and, if this is not possible, they must act assisted by an interpreter who has such knowledge.

The intervention of the Legal Adviser will be to guide, advise or legally intervene in criminal proceedings on behalf of the victim or offended party.

At any stage of the procedure, the victims may act on their own or through their Legal Adviser, who will only promote what is previously reported to their client. The Legal Adviser will intervene on behalf of the victim or offended party on equal terms with the defender.

Explanation: The legal advisor's purpose is to advise and request before the judge or the prosecutor, in certain cases, the promotion of the rights of the victim.

Article 111. Restoration of things to the previous state.

At any stage of the procedure, the victim or offended party may request the Court to order as a provisional measure, when the nature of the act allows it, the restitution of their assets, objects, instruments or products of crime, or the replacement or restoration of the

things to the state they had before the fact, as long as there are enough elements to decide it.

Explanation: The control judge can be requested at any time from the beginning of the complaint or the complaint that things return to how they were before.

A very common example is the case of the victims of dispossession, a paratrooper entered the home without the right, and in this context the victim, through his legal adviser, can request the judge to order the paratroopers to leave the home.

In the event that the paratroopers do not comply with the judge's mandate to withdraw, they may use public force.

CHAPTER III: DEFENDANT

Article 112. Denomination.

A person who is indicated by the Public Prosecutor's Office as a possible perpetrator or participant in an act that the law establishes as a crime will be generically referred to as a defendant.

In addition, the person against whom an accusation has been formulated and sentenced will be called the person on whom a sentence has fallen even though it has not been declared final.

Article 113. Rights of the accused.

The defendant shall have the following rights:

I. To be considered and treated as innocent until proven guilty;

II. To communicate with a family member and with his Defender when he is detained, and the Public Ministry must provide him with all the facilities to achieve it;

III. To declare or remain silent, with the understanding that their silence may not be used to their detriment;

IV. To be assisted by his defender at the time of rendering his statement, as well as in any other action, and to previously meet with him in private;

V. To be informed, both at the time of his arrest and at his appearance before the Public Prosecutor's Office or the control judge, the facts with which he is accused and the rights that assist him, as well as, where appropriate, the reason for the deprivation of his liberty and the public servant who ordered it, exhibiting, as appropriate, the order issued against him;

VI. Not to be subjected at any time during the procedure to techniques or methods that violate their dignity, induce or alter their free will;

VII. To request before the judicial authority the modification of the precautionary measure that has been imposed, in the cases in which he is in preventive detention, in the cases indicated by this Code;

VIII. To have access to him and his defense, except for the exceptions provided by law, to the investigation records, as well as to obtain a free copy, photographic or electronic record thereof, in terms of articles 218 and 219 of this Code.

IX. To receive the pertinent means of proof that it offers, granting it the necessary time for this purpose and assisting itself to obtain the appearance of the persons whose testimony it requests and that it cannot present directly, in terms of what is established by this Code;

X. To be judged in court by a trial court, within four months in the case of crimes whose maximum penalty does not exceed two years in prison, and within one year if the penalty exceeds that time, unless a longer term is requested. his defense;

XI. To have an adequate defense by a law graduate or qualified lawyer, with a professional license, whom he will choose freely even from the moment of his arrest and, in the absence of this, by the corresponding Public Defender, as well as to meet or meet with him in strict confidence;

XII. To be assisted free of charge by a translator or interpreter in the event that they do not understand or speak the Spanish language; when the accused belongs to an indigenous people or community, the Ombudsman must have knowledge of their language and culture and, if this is not possible, must act assisted by an interpreter of the culture and language in question;

XIII. To be presented before the Public Ministry or before the Control Judge, as the case may be, immediately after being detained or apprehended.

XIV. Not to be exposed to the media;

XV. Not to be presented before the community as guilty

XVI. To request, from the moment of his arrest, social assistance for minors or people with disabilities whose personal care he is in charge of;

XVII. To obtain his freedom in the event that he has been detained, when preventive detention is not ordered, or another precautionary measure restricting his freedom;

XVIII. To inform the corresponding embassy or consulate when they are detained, and to provide immigration assistance when they have foreign nationality, and

XIX. Others established by this Code and other applicable provisions.

The terms referred to in section X of this article, will be counted from the initial hearing until the moment in which the sentence issued by the competent jurisdictional body is handed down.

When the defendant is caring for minors, people with disabilities, or the elderly who depend on him, and there is no other person who can exercise that care, the Public Ministry must channel them to the corresponding social assistance institutions, for the purpose of receive protection.

Article 114. Statement of the accused.

The accused shall have the right to testify during any stage of the proceedings. In this case, you may do so before the Public Prosecutor's Office or before the Court, with full respect for your rights and in the presence of your Defender.

In the event that the accused manifests to the Police his desire to testify about the facts that are being investigated, the latter must notify said situation to the Public Prosecutor's Office so that his statements can be received with the formalities provided for in this Code.

This isolated thesis helps to better interpret this article:

RIGHT NOT TO SELF-INCRIMINATION. IF THE CAPTORS, BY THEMSELVES AND WITHOUT THE LEADING OF THE PUBLIC PROSECUTOR, TAKEN THE SELF-INCRIMINATORY STATEMENT OF THE PERSON INVOLVED –CONTAINED IN THE APPROVED POLICE REPORT– IT IS LEGAL FOR THE CONTROL JUDGE, IN HIS DECISION, NOT TO CONSIDER IT AND EXCLUDE IT FROM THE EVIDENCE MATERIAL. From the consistent interpretation of articles 113, sections III and IV, 114 and 132, section X, of the National Code of Criminal Procedures, it is noted that the captive police officers, per se, cannot receive the defendant's statement, but must do so be done under the command and direction of the prosecuting technical body, and with respect for the rights provided for this purpose in the Political Constitution of the United Mexican States – reading of rights and informing them of the facts for which an investigation is being carried out in against him, as well as the presence of a defense attorney-, so if those did not act in accordance with the aforementioned precepts, and motu proprio took the self-incriminating statement of the person involved -contained in the approved police report-, it is legal that the Control Judge , in its decision, does not consider it and excludes it from the evidentiary material, since to guarantee the principle of "immunity to declare", contained in the human right of non-self-incrimination, established in article 20, section B, section II, of the Federal Constitution, the Control Judge -even in the initial stage- must exclude the self-incriminating statement that is noted from the statements made by the Public Ministry on the indicated approved police report, because according to the aforementioned constitutional article, in relation to the various 8, numerals 2, subparagraph g) and 3 of the American Convention on Human Rights, the defendant's confession is only valid when it is made in the presence of the defender and, by virtue of this, any incriminating information rendered without the legal formalities may not be be considered by the court.

CHAPTER IV: ADVOCATE

Article 115. Appointment of Defender.

The defender may be appointed by the defendant from the moment of his arrest, who must be a law graduate or a qualified lawyer with a professional license. In the absence of this or due to the omission of its designation, the corresponding Public Defender will be appointed.

The defender's intervention does not undermine the right of the accused to intervene, formulate requests and make the statements that he deems appropriate.

Explanation: The right to defense by a qualified lawyer for the accused arises from the first act of nuisance that is carried out against him, either as referred to in this article, at the time of his arrest, when he receives the first summons to appear at the ministerial headquarters or judicial headquarters, and in general, any act of authority that even temporarily limits your freedom of transit when performing an obligation to do or fail to do.

This thesis helps to better interpret the article:

INITIAL HEARING. IF THE ACCUSED DOES NOT HAVE A DEFENDER TO REPRESENT HIM, THE CONTROL JUDGE, PRIOR TO GRANTING HIM THE OPPORTUNITY TO TESTIFY, SHOULD MAKE SURE THAT HE KNOWS AND UNDERSTANDS HIS CONSTITUTIONAL AND LEGAL RIGHTS, AND NOT ONLY ASK HIM IF HE KNOWS THEM, WITHOUT OFFERING FURTHER EXPLANATION BECAUSE, OTHERWISE, THE FORMALITIES OF SAID DILIGENCE ARE BREACHED. In accordance with article 20, section B, section VIII, of the Political Constitution of the United Mexican States, interpreted in harmony with numbers 113, 115, 118, 122, 125, 134, 316 and 317 of the National Code of Criminal Procedures, as well as to the criterion contained in advisory opinion OC-16/99, issued by the Inter-American Court of Human Rights, entitled: "The right to information on consular assistance within the framework of the guarantees of due legal process", it is required that for respect the formalities of the procedure in the initial hearing, the accused must have an adequate technical defense that assists him in all the stages in which he intervenes (1. Control of legality of the detention; 2. Procedure to formulate an accusation; 3. Opportunity to declare, and 4. Opportunity to resolve the request for linking to the process). Then, the way to guarantee them implies that the control judge, before granting the accused the opportunity to testify, must inform him of his constitutional and legal rights, if they had not been previously made known, for which, he must make sure, through of some reference, that the defendant knows and understands his rights, without this obligation being considered fulfilled by simply asking him if he knows them, when he lacks a lawyer who can advise him in this regard. Consequently, if the request made to the defendant regarding knowledge of his rights is made without him having a public or private defender to represent him and without further explanation or inquiry by the control judge, it allows us to infer that there was no

effective demonstration that he knew them, since he did not have the opportunity to reflect on them with a legal advisor; hence, the lack of verification by the control Judge, that the defendant actually knew his rights, prior to making his statement, makes it impossible to estimate that the aforementioned requirements are fulfilled.

Article 116. Accreditation.

The designated Defenders must accredit their profession before the Judicial Body from the beginning of their intervention in the procedure, by means of a professional certificate legally issued by the competent authority.

Explanation: It is of the utmost importance that each lawyer who appears as defense attorney be registered in the administration of the competent court, in order to comply with the purpose of the procedure and not violate it, since the lack of accreditation of this situation could cause the nullity of the actions and resolutions that have been issued.

ADEQUATE DEFENSE AT THE INITIAL HEARING OF THE ACCUSATORY CRIMINAL PROCEEDING. THE DEFENDER'S STATUS AS A LAW GRADUATE MUST BE CERTIFIED WITH THE PREVIOUS REGISTRATION OF THE PROFESSIONAL CERTIFICATE IN THE REGISTRY SYSTEMS OR BEFORE THE JUDICIAL EMPLOYEES DESIGNATED FOR SUCH PURPOSE, AND WITH THE SIMPLE MENTION THAT SUCH DATA IS MADE AT THE RESPECTIVE HEARING. The Supreme Court of Justice of the Nation has interpreted that the right to a technical defense is respected when the accused is assisted by a qualified lawyer in each of the stages that comprise the criminal procedure. In this sense, in accordance with article 116 of the National Code of Criminal Procedures, it is the obligation of the defender to accredit before the court his capacity as a law graduate, with the exhibition of the professional license of a law graduate issued by the legally competent authority. ; document that must be registered prior to the opening of the initial hearing, which can be done in two ways: a) at the corresponding professional license registration center; or, b) before the official who, according to the law, has the obligation, prior to the start of the hearing, to collect the respective information, which will give the Control Judge the opportunity to corroborate the quality of the defender's law degree, which will be achieved with the single reference that he makes when identifying himself, referring to his identity card and registration number, questioning the record and records assistant, assistant or room manager, as called by the corresponding legislation applicable to each specific case, whether these data were collated with the respective identifications displayed moments prior to the holding of the hearing, highlighting of course among said data, the ID number that corresponds to the law graduates who appear as defense attorneys for the accused, so that it is recorded in the video recording of this fact, this by virtue of the fact that it is the first step in the process in which the accused participates directly.

Article 117. Obligations of the defender.

The defender's obligations are:

I. Interview the accused to know directly his version of the facts that motivate the investigation, in order to offer the data and pertinent means of proof that are necessary to carry out an adequate defense;

Explanation: It is of the utmost importance to listen to the version of the accused person, since this will serve to create the defensive route that will have to be taken to achieve the expected result, verify what evidence data to collect and in due course what means of evidence will be offered. .

II. Advise the accused on the nature and legal consequences of the punishable acts attributed to him;

Explanation: Part of all the rights that assist the person investigated for a crime is precisely to know the possible scope due to the crimes that are charged, as well as the possible solutions and the way to resolve the criminal process, in case of be legally appropriate.

III. Appear and legally assist the accused at the time he renders his statement, as well as in any proceeding or hearing established by law;

Explanation: At the time of protesting as a defense lawyer, all the obligations inherent to the position are acquired, the accused must be accompanied at all times for such purposes, he may even incur in crimes committed by lawyers, if these are not complied with unjustifiably. same obligations.

IV. Analyze the records that are in the investigation folder, in order to have more elements for the defense;

Explanation: In direct relation to the right of defense and the obligations of the defender, it is that the latter must analyze in detail the records with which the investigation folder has, discriminate the information that is not important for the case and focus on test data that may prejudice defensive theory.

V. Communicate directly and personally with the accused, when deemed appropriate, as long as this does not alter the normal development of the hearings;

Explanation: It is the right of the accused and his defense attorney to be in constant communication at all times, inside or outside the courtroom, however, the judge, as the person in charge of directing the normal development of the hearing, also has the obligation to ensure the behavior of the parties, where it can even make use of enforcement measures in the event that the orders it issues are not complied with.

VI. Collect and offer the means of proof necessary for the defense**;**

Explanation: The defense must be technical at all times, and if there are means of proof that can strengthen the defensive theory and achieve the result that is displayed, it is that these must be offered and unburdened in your case.

VII. Present the arguments and test data that distort the existence of the fact that the law indicates as a crime, or those that allow asserting the origin of some cause of non-imputation, dismissal or exclusion of responsibility in favor of the accused and the prescription of the criminal action or any other legal cause that benefits the accused;

Explanation: The defense must at all times argue in favor of its defender, if within the tax statement, or from the information found within the investigation folder, it is noted that an exclusive crime or some other type of information can be updated. legal situation that benefits the accused, must be noticed by the defense so that it can be assessed by the court, and in any case, opt for the position that is affirmed.

VIII. Request the non-exercise of criminal action;

Explanation: In the event that there is any justification to request the public prosecutor not to exercise criminal action and thereby terminate the criminal proceedings against the accused, it must be asserted.

IX. Offer the data or means of proof in the corresponding hearing and promote the exclusion of those offered by the Public Ministry or the victim or offended when they do not conform to the law;

Explanation: This point is mainly due to the intermediate hearing, although it can also occur in the process link hearing, the defender must at all times request the exclusion of test data that violate fundamental rights, and in the case of intermediate hearing which are candidates for exclusion in accordance with the rules established in number 346 of this law.

X. Promote in favor of the accused the application of alternative dispute resolution mechanisms or early forms of termination of the criminal process, in accordance with the applicable provisions;

XI. Participate in the trial hearing, in which you will be able to present your opening arguments, discuss the evidence offered, dispute those of the other participants, make the appropriate objections and formulate your final arguments;

XII. Keep the accused informed about the development and follow-up of the procedure or trial;

XIII. Where appropriate, make requests for special procedures;

XIV. Keep professional secrecy in the performance of their duties;

XV. File the appeals and incidents in terms of this Code and the applicable legislation and, where appropriate, promote the Amparo trial;

XVI. Inform the accused and their families of the legal situation in which their defense is, and

XVII. The others indicated by the laws.

Article 118. Subsequent appointment.

During the course of the procedure, the accused may designate a new Defender, however, until the new Defender does not appear to accept the position conferred, the Court or the Public Ministry will designate the accused a Public Defender, in order not to leave him helpless.

Article 119. Inadmissibility and departure.

In no case may any person who is a co-accused of the accused, who has been sentenced for the same act or accused of being the author or participant in the cover-up or favoring of the same act, be appointed as Defender of the accused.

Article 120. Resignation and abandonment.

When the Ombudsman resigns or abandons the defense, the Public Prosecutor's Office or the Judicial Body will let the accused know that he has the right to designate another Ombudsman; however, as long as you do not designate it or do not want or cannot name it, a Public Defender will be appointed for you.

Article 121. Technical Defense Guarantee.

Whenever the Court notices that there is a manifest and systematic technical incapacity of the Ombudsman, it will prevent the accused to designate another.

If it is a private Defender, the accused will have three days to designate a new Defender.

If the accused is notified, another is not designated, a Public Defender will be assigned to collaborate in his defense. If it is a Public Defender, regardless of the responsibility incurred, the hierarchical superior will be seen for the purposes of substitution.

In both cases, a term that will not exceed ten days will be granted so that an adequate defense can be developed from the act that caused the change.

Article 122. Appointment of the Public Defender.

When the accused cannot or refuses to designate a private Defender, the Public Ministry will request the competent authority to appoint a Public Defender; if it is before the jurisdictional body, it will designate the public defender, who will represent the defense from the first act in which it intervenes. It will be the responsibility of the defender the timely appearance.

Explanation: The accused at all times must be represented by a defender, who may be private or public.

It is important to remember that the public defender is free, so you cannot request payment of fees for their professional services.

In my professional experience, we can conclude that both lawyers, both public and private, are good lawyers, however, due to the workload, on some occasions public defenders do not have the time to attend to the issues of the sponsored with due diligence, so that we recommend if your economic capacity allows it, hire the services of a private firm.

Article 123. Number of defenders.

The accused may designate the number of Defenders that he deems convenient, who, in the hearings, will speak in order and must act with respect in all cases.

Article 124. Common Defender.

The defense of several defendants in the same process by a common Defender will not be admissible, unless it is proven that there is no incompatibility or conflict of interest of the defendants' defenses. If the common Defender is authorized and the incompatibility is noticed in the course of the process, it will be corrected ex officio and what is necessary will be provided to replace the Defender.

Article 125. Interview with the detainees.

The defendant who is detained for any reason, before making a statement, will have the right to have a timely and private interview with his Defender, when requested, in the place designated for that purpose. The knowledge authority has the obligation to implement everything necessary for the free exercise of this right.

Article 126. Interview with other people.

If before a hearing, due to its preparation, the Ombudsman needs to interview a person or person involved in the procedure who refuses to receive it, he may request judicial assistance, explaining the reasons why the interview is necessary. The Court, in case of considering the request founded, will issue the order for said person to be interviewed by the Ombudsman in the place and time that it establishes or the Court itself determines. This authorization will not be granted in those cases in which, at the request of the Public Ministry, the Judicial Body deems that the victim or witnesses should be subject to special protection protocols.

CHAPTER V: PUBLIC MINISTRY

Article 127. Competition of the Public Ministry.

It is the responsibility of the Public Ministry to conduct the investigation, coordinate the Police and the expert services during the investigation, decide on the exercise of criminal action in the manner established by law and, where appropriate, order the pertinent and useful procedures to demonstrate, or not, the existence of the crime and the responsibility of the person who committed it or participated in its commission.

Article 128. Duty of loyalty.

The Public Ministry must act during all the stages of the procedure in which it intervenes with absolute adherence to the provisions of the Constitution, this Code and other applicable legislation. The Public Prosecutor must provide truthful information about the facts, about the findings in the investigation and will have the duty not to hide from the intervening elements any element that could be favorable for the position they assume, especially when it decides not to incorporate any of those elements. to the procedure, except for the reservation that in certain cases the law authorizes in investigations.

This thesis helps to interpret this article:

PUBLIC MINISTRY. IF YOU FAIL TO INFORM THE CONTROL JUDGE THAT IN RELATION TO THE FACTS ATTRIBUTED TO THE DEFENDANT, THE NON-LINK TO THE PROCEEDING HAD ALREADY BEEN DETERMINED, AND THE REASONINGS THAT SUPPORT IT, AS WELL AS THE INNOVATIVE INVESTIGATION ELEMENTS WITH WHICH THE DEFICIENCY WAS CORRECTED, THERE IS A BREACH OF THE DUTY OF LOYALTY GOVERNING THE ACCUSATORY CRIMINAL SYSTEM. In accordance with articles 128 and 131, section XX, of the National Code of Criminal Procedures, the Public Prosecutor must provide reliable information to the court and the accused regarding the facts and findings in the investigation; Likewise, it will have the duty not to hide from the parties involved any element that could be favorable for the position they assume, above all, when it decides not to incorporate any of those elements into the procedure, except for the reservation that in certain cases the law authorizes in the research; from which it derives that it is the obligation of the Public Ministry to refer to all the facts, among which is, to inform the judicial authority that previously and before different Control Judge, in relation to the facts imputed to the accused, the no link to the process in favor of the accused and the reasoning that supports it, as well as the innovative research elements with which to correct the deficiency, for the purpose of modifying the previous determination; If this is not done, the resolutions issued by the Control Judges would not have any procedural effect, since it would suffice to request a new formulation of the imputation and connection to the process, going multiple and reiterated to various Control Judges to verify at the discretion of which , with the same test data, the illegal act considered as a crime and the probable responsibility of the accused are proven; conduct of the social representation with which it would breach the duty of loyalty that governs the accusatory penal system.

Article 129. Duty of objectivity and due diligence.

The investigation must be objective and refer to both the elements of charge and discharge and conducted with due diligence, in order to guarantee respect for the rights of the parties and due process.

At the conclusion of the complementary investigation, you can request the dismissal of the process, or, in the trial hearing, you can conclude by requesting an acquittal or a lighter sentence than the one suggested by the accusation, when elements that lead to that conclusion arise in the accusation, in accordance with the provisions of this Code.

During the investigation, both the accused and his Defender, as well as the victim or the offended party, may request from the Public Prosecutor all those investigative acts that he considers pertinent and useful for the clarification of the facts. The Public Prosecutor's Office will decide on said request within a period of three days. For this purpose, it may provide that the procedures deemed appropriate for the purposes of the investigation be carried out.

The Public Ministry may, with full respect for the rights that protect him and in the presence of the defender, request the appearance of the accused and/or order his statement, when it considers that it is relevant to clarify the existence of the criminal act and the probable participation or intervention.

Article 130. Burden of proof.

The burden of proof to demonstrate guilt corresponds to the accusing party, as established by the criminal type.

Explanation: In accordance with the provisions of the general principles of the criminal process established in numeral 20, section A of the political constitution of the United Mexican States, who must prove the elements of the criminal type as well as the responsibility of the person accused is the accusing party, that is to say, the public ministry, and in exceptional cases who exercises the private criminal action.

Therefore, the accused or whoever is defending them has the possibility of exercising a passive defense of rebuttal, where they focus on convincing the trial court that the criminal type is not proven or that there is doubt about the responsibility of the accused, which by legal provision obliges the court to acquit.

Article 131. Obligations of the Public Ministry.

For the purposes of this Code, the Public Ministry shall have the following obligations:

I. Monitor that in any investigation of crimes, the human rights recognized in the Constitution and in the Treaties are strictly complied with;

Explanation: The Public Prosecutor's Office as a body dependent on the federal and local executive power is the guarantor and has the obligation to comply with what is established by the Magna Carta and international treaties.

In particular, it is extremely important to observe the obligations that are imposed in article 14 to 23 of the constitution, and on the other hand what is established in article 8 of the American convention on human rights.

II. Receive complaints or complaints that are presented orally, in writing, or through digital media, including through anonymous complaints in terms of the applicable legal provisions, about facts that may constitute a crime;

Explanation: It is the obligation of the public ministry to start the investigation of crimes as quickly as possible, so it must start the investigation from the moment it receives the criminal news.

It is important to point out that the ministerial police can carry out the pertinent steps to verify that the facts denounced are real, even before starting investigations, so the public prosecutor must act with total professionalism so as not to delay an investigation that due to the characteristics of the fact it is necessary that it be started immediately.

III. Exercise the conduction and command of the investigation of crimes, for which it must coordinate the Police and the experts during it;

Explanation: As the person in charge of the investigation, the public ministry must at all times direct the police officers, assistants with whom it has and send the requests to expert services that are necessary, and of course are pertinent for the purpose of proving the criminal type and responsibility who or who may be responsible for the crime.

More than one line of investigation can be used if, due to the complexity of the fact or the lack of accurate information, it is necessary to investigate several avenues and seek to increase the chances of success in the investigation.

IV. Order or supervise, as the case may be, the application and execution of the necessary measures to prevent the evidence from being lost, destroyed or altered, once it becomes aware of it, as well as making sure that the rules and regulations have been followed. protocols for its preservation and processing;

V. Initiate the corresponding investigation when appropriate and, where appropriate, order the collection of evidence and means of proof that must be used for their respective resolutions and those of the Court, as well as collect the necessary elements to determine the damage caused by the crime and its quantification for the effects of its reparation;

VI. Exercise investigative functions regarding crimes in concurrent matters, when exercising the power of attraction and in other cases established by law;

VII. Order the Police and their auxiliaries, within the scope of their competence, to carry out investigative acts leading to the clarification of the criminal act, as well as to analyze those that said authorities may have carried out;

VIII. Instruct the Police on the legality, relevance, sufficiency and forcefulness of the evidence collected or to be collected, as well as the other activities and procedures that must be carried out within the investigation;

IX.-Require reports or documentation from other authorities and individuals, as well as request the practice of expert opinions and proceedings to obtain other means of proof;

X. Request to the Jurisdictional Body the authorization of acts of investigation and other actions that are necessary within it;

XI. Order the arrest and retention of the accused when appropriate under the terms established in this Code;

XII. Provide the necessary security measures, in order to guarantee that the victims or offended or witnesses of the crime can carry out the identification of the accused without risk to them;

XIII. Determine the temporary file and the non-exercise of criminal action, as well as exercise the power not to investigate in cases authorized by this Code;

XIV. Decide the application of opportunity criteria in the cases provided for in this Code;

XV. Promote the necessary actions to provide security and provide assistance to victims, offended parties, witnesses, judges, magistrates, agents of the Public Ministry, Police, experts and, in general, to all subjects who, due to their intervention, in the procedure, whose life or bodily integrity is in imminent risk;

XVI. Take criminal action when appropriate; XVII. Make available to the Court the persons detained within the terms established in this Code;

XVII. Promote the application of alternative dispute resolution mechanisms or early forms of termination of criminal proceedings, in accordance with the applicable provisions;

XVIII. Request the precautionary measures applicable to the accused in the process, in attention to the relevant provisions and promote their compliance;

XIX. Communicate to the Court and the defendant the facts, as well as the evidence that supports them and the legal foundation, taking into account the objective or purpose of each stage of the procedure;

xx. Request the judicial authority to impose the corresponding penalties or security measures;

XXI. Request payment of reparation for the damage in favor of the victim or victim of the crime, without prejudice to the fact that they could request it directly;

XXII Act in strict adherence to the principles of legality, objectivity, efficiency, professionalism, honesty and respect for human rights recognized in the Constitution, and

XXIII. The others indicated in this Code and other applicable provisions.

CHAPTER VI: POLICE

Article 132. Obligations of the Police.

The Police will act under the leadership and command of the Public Ministry in the investigation of crimes in strict adherence to the principles of legality, objectivity, efficiency, professionalism, honesty and respect for human rights recognized in the Constitution.

For the purposes of this Code, the Police will have the following obligations:

I. Receive complaints about facts that may constitute a crime and inform the Public Ministry by any means and immediately of the proceedings carried out;

Explanation: The police must receive the criminal notice by any means without the need to request formalities for it, in the case of crimes they will receive the information from any person and through investigation they will verify that the information is true and from that moment on the investigation.

II. Receive anonymous complaints and immediately bring them to the attention of the Public Ministry so that it coordinates the investigation;

Explanation: In the same way, when an anonymous complaint is received, the police will focus on verifying if the information that was received is true, and if it is true, the investigation should begin.

III. Carry out arrests in the cases authorized by the Constitution, informing the detained person of the rights that it grants;

Explanation: It is the obligation of the police to detain any person if appropriate, whether by arrest warrant, some assumption of crime, urgent case or summons.

IV. Prevent that the crimes are consummated or that the facts produce subsequent consequences. Especially, it will be obliged to carry out all the necessary acts to avoid a real, current or imminent aggression and without right in protection of legal rights of the governed whom it has the obligation to protect;

Explanation: The police have the obligation to act when they are witnessing a situation where a crime could be committed, it is one of the most important obligations they have.

V. Act under the command of the Public Ministry in the seizure of assets related to the investigation of crimes;

Explanation: The indications must be ensured at all times in order to be able to carry out the investigative acts necessary for the success of the investigation.

VI. Report without delay by any means to the Public Prosecutor's Office on the arrest of any person, and immediately register the arrests in the registry established for that purpose by the applicable provisions;

Explanation: The fact of informing the public prosecutor about any detention is of the utmost importance since in addition to the fact that the investigation is fast and efficient, the fact that having a person detained and not determining their legal detention as quickly as possible can lead to incur administrative or criminal liability for the seizing authority, either who executed it or who ordered it.

VII. Carry out inspections and other investigative acts, as well as report their results to the Public Ministry. In those that require judicial authorization, you must request it through the Public Ministry;

Explanation: The inspections that are carried out on objects or people will always have to have a causal link with the criminal notice that was carried out, otherwise an act of unjustified nuisance.

In the event that it is one of the investigative acts established in article 252 of the National Code of Criminal Procedures, they will be those that require judicial control, obviously, the public prosecutor will be needed to request it directly after the control.

VIII. Preserve the place of the facts or the discovery and, in general, carry out all the necessary acts to guarantee the integrity of the evidence. In your case, you must notify the Police with capacities to process the scene of the event and the Public Ministry in accordance with the provisions set forth in this Code and in the applicable legislation;

Explanation: Processing the scene of the crime and sometimes cordoning it off is extremely important in order to collect all the indications and evidence that may be related to the criminal act investigated.

IX. Collect and safeguard objects related to the investigation of crimes, under the terms of the previous section.

Explanation: It is of the utmost importance that the police carry out an adequate safeguard, avoiding the manipulation of it that could cause traces or some indication to be lost, since at the time these may be examined by experts and even be incorporated into court for what the need for it arises.

X. Interview people who could provide any data or element for the investigation;

XI. Require the competent authorities and request reports and documents from natural or legal persons for the purposes of the investigation. In case of refusal, it will inform the Public Ministry so that it can determine what is appropriate;

XII. Provide care to victims or offended or witnesses of the crime. For this purpose, you must:

a) Provide protection and immediate assistance, in accordance with the applicable provisions;

b) Inform the victim or offended about the rights that are established in his favor;

c) Ensure that they receive medical and psychological care when necessary, and

d) Adopt the measures deemed necessary, within the scope of its competence, tending to avoid endangering their physical and psychological integrity;

XIII. Comply with the ministerial and jurisdictional commandments that are instructed;

XIV. Issue the police report and other documents, in accordance with the applicable provisions. For this purpose, it may be supported by the knowledge that is necessary, without it having the character of expert reports, and

XV. The others conferred by this Code and other applicable provisions.

CHAPTER VII: JUDGES AND MAGISTRATES

Article 133. Jurisdictional competence.

For the purposes of this Code, jurisdictional jurisdiction includes the following bodies:

I. Control judge, with competence to exercise the powers that this Code recognizes from the beginning of the investigation stage until the issuance of the order to open the trial;

Explanation: The control judge will obviously be limited to participating in the trial hearing, this by virtue of the impartiality that must exist in the court based on what has happened during the criminal process.

II. Trial court, which presides over the trial hearing and will dictate the sentence, and

Explanation: This will be the court that will carry out the trial hearing, these may be unitary or collegiate as established by the organic law of each competent judicial power depending on the trial to be carried out.

III. Court of Appeal, which will hear the means of challenge and other matters provided for in this Code.

Explanation: The appellate court will hear the appeal made in article 467 of the adjective codification, it will be made up of rooms where three magistrates act who hear the statements made by the parties.

Article 134. Common duties of judges.

Within the scope of their respective powers and powers, the following are common duties of judges and magistrates:

I. Resolve the matters submitted for its consideration with due diligence, within the terms provided by law and subject to the principles that should govern the exercise of the jurisdictional function;

Explanation: Judges and magistrates must resolve any matter that falls within their jurisdiction and there is no cause to excuse or challenge it.

II. Respect, guarantee and ensure the safeguarding of the rights of those involved in the procedure;

Explanation: Judges and magistrates must ensure that the rights of the process and the rights of the parties involved in the process are respected.

III.Keep confidentiality on matters related to their function, even after having ceased to exercise the position;

Explanation: It is of the utmost importance that they keep confidentiality on the matters of which they have known or are knowing at the moment.

IV. Timely and duly address the requests directed by the subjects involved in the criminal procedure;

Explanation: The requests that are made by the parties in the process must be addressed, even if they are notoriously inadmissible, since this generates legal certainty and allows the party in the process to appeal or carry out any legal action that is legally appropriate.

V. Refrain from publicly presenting the defendant or defendant as guilty if there was no conviction;

Explanation: The judge and magistrate as guarantor of the process must guarantee that due process and the presumption of innocence are respected during the course of the process, so they must avoid giving it that treatment, as well as perceive any party or means of communication to do the same.

VI. Maintain order in the courtrooms, and

Explanation: The order in the hearings is essential so that he can vent calmly and that the process continues its course, so if any of the parties, or even the public, upsets this point, the judicial authority may enforce urgent measures to maintain order.

VII. The others established in the Organic Law, in this Code and other applicable provisions.

Article 135. The complaint and its origin.

A complaint will proceed against the first instance judge for not carrying out a procedural act within the period indicated by this Code. The complaint may be promoted by any part of the procedure and will be processed without prejudice to the other legal consequences of the judge's omission.

The complaint will be filed before the omitted jurisdictional body; The latter has a period of twenty-four hours to correct said omission, or, alternatively, make a brief and concise report on the reasons why the procedural act or the formality required by the omitted rule has not been verified and send the appeal and said report to the Competent court body.

The competent jurisdictional authority will process and resolve within a period of no more than three days under the terms of the applicable provisions.

In no case, the competent Court Body to resolve the complaint may order the omitted Court Body the terms and conditions in which it must correct the omission, its resolution having to be limited to performing the omitted act.

CHAPTER VIII: ASSISTANTS OF THE PARTIES

Article 136. Technical consultants.

If, due to the circumstances of the case, the parties involved in the procedure consider the assistance of a science, art or technical consultant necessary, they will raise this with the Court. The technical consultant may accompany the party with whom he collaborates at the hearings, to provide technical support.

Explanation: It is very common that during the development of the hearing, experts are needed to speak about a science that is not in the domain of lawyers, so if the circumstances of the case warrant it, any of the parties may be accompanied by an expert. .

For example, in a tax criminal order procedure, it will be very common for the defender or the public prosecutor to be in the company of an accountant, or even a tax lawyer, for the purpose of supporting him in better understanding the counterpart's approach, either about a contribution, or in general, some concept that escapes the expertise of the criminal lawyer.

TITLE VI: PROTECTION MEASURES DURING THE INVESTIGATION, FORMS OF DRIVING THE ACCUSED TO THE PROCESS AND PRECAUTIONARY MEASURES

CHAPTER I: PROTECTION MEASURES AND PRECAUTIONARY MEASURES

Article 137. Protection measures.

The Public Prosecutor's Office, under its strictest responsibility, will order the application of suitable protection measures with reason and reason when it deems that the accused represents an imminent risk against the safety of the victim or offended party.

The following are protective measures:

I. Prohibition to approach or communicate with the victim or offended;

II. Limitation to attend or approach the home of the victim or offended or the place where it is;

III. Immediate separation from home;

IV. The immediate delivery of objects for personal use and identity documents of the victim that the probable perpetrator had in his possession

V. The prohibition of carrying out behaviors of intimidation or annoyance to the victim or offended or to people related to them;

VI. Surveillance at the home of the victim or offended;

VII. Police protection of the victim or offended;

VIII. Immediate assistance by members of police institutions, to the address where the victim or offended party is located or found at the time of request;

IX. Transfer of the victim or victim to shelters or temporary shelters, as well as their descendants AND

X. The re-entry of the victim or victim to his home, once his safety is safeguarded.

Within five days following the imposition of the protection measures provided for in sections I, II and III, a hearing must be held in which the judge may cancel them, or ratify or modify them by imposing the corresponding precautionary measures.

In the event of non-compliance with the protection measures, the Public Prosecutor's Office may impose any of the enforcement measures provided for in this Code.

In the application of these measures in the case of crimes based on gender, the General Law on Women's Access to a Life Free of Violence will be applied in a supplementary manner.

Article 138. Precautionary measures for the restitution of the victim's rights.

To guarantee reparation for the damage, the victim, the offended party or the Public Prosecutor's Office may request the following precautionary measures from the judge:

I.The seizure of assets, and

II. The immobilization of accounts and other values that are within the financial system. The judge will dictate the precautionary measures, as long as, from the test data exposed by the Public Ministry and the victim or offended, the possible repair of the damage and the probability that the accused will be responsible for repairing it emerges.

Once the precautionary order has been decreed, it may be reviewed, modified, replaced or canceled at the request of the accused or interested third parties, and the victim or offended party and the Public Ministry must be heard.

The precautionary measures will be canceled if the defendant guarantees or pays the repair of the damage; if they were decreed before the initial hearing and the Public Ministry does not promote them, or does not request an arrest warrant within the term indicated in this Code; if the request for cancellation of the embargo filed by the person against whom it was decreed or by a third party is declared founded, or if an acquittal is issued, the dismissal is decreed or the damage reparation is acquitted.

The precautionary measure will be made effective in favor of the victim or offended when the judgment that orders to repair the damage is enforceable. The embargo will be governed as pertinent by the general rules of the embargo provided for in the Federal Code of Civil Procedures.

Article 139. Duration of protection measures and precautionary measures.

The imposition of protection measures and precautionary measures will have a maximum duration of sixty calendar days, extendable up to thirty days.

When the cause that gave rise to the decreed measure has disappeared, the accused, his Defender or, where appropriate, the Public Prosecutor's Office, may request the control judge to leave it without effect.

CHAPTER II: RELEASE DURING INVESTIGATION

Article 140. Release during the investigation.

In cases of arrest for crime, in the case of crimes that do not deserve informal pretrial detention and the Public Prosecutor determines that it will not request pretrial detention as a precautionary measure, it may order the release of the accused or impose a protection measure under the terms of the provided by this Code.

When the Public Prosecutor decrees the release of the accused, it will warn him so that he refrains from bothering or affecting the victim or offended party and the witnesses of the fact, not to hinder the investigation and to appear as many times as is summoned for the practice of investigation proceedings. investigation, warning him to impose measures of urgency in case of unjustified disobedience.

Explanation: This article establishes a couple of legal locks so that the public prosecutor cannot release the defendant during arrest in crime, the first of which is that the crime for which he has been arrested is not one of those that establish preventive detention same that you can find in article 19 of the Constitution and in article 167 of the national code of penal procedures, and on the other hand, that even though it is not a crime that deserves preventive detention, the public prosecutor intends to request justified preventive detention be it due to the danger of removal of the accused from the process or some risk to the victim or offended party, witnesses or to the community.

On the other hand, and in the event that any of the assumptions mentioned above does not occur, the public prosecutor may, at its discretion and with full discretion, order the release of the accused. From my point of view, this article is totally contrary to respect for fundamental rights and, in particular, the right of the victim to expedited reparation for damage, and on the other hand, the right to prompt and expeditious justice.

The statement in the previous paragraph is as follows: the prosecutor, even having sufficient evidence to obtain a connection to the process, is that he gives the public prosecutor the opportunity to "release" the accused, which gives the prosecutors an opportunity so that they even have the opportunity to commit acts of corruption.

CHAPTER III: FORMS OF DRIVING THE ACUSSED TO THE PROCESS

SECTION I: Summons, Summons and Arrest

Article 141. Summons, summons and arrest warrant.

When a complaint or complaint has been filed for an act that the law indicates as a crime, the Public Ministry announces that there is data in the investigation file that establishes that the act has been committed and there is a probability that the accused has committed or participated in it. In his commission, the Control Judge, at the request of the Public Ministry, may order:

I. Summons the accused for the initial hearing;

Explanation: This is the general rule of conducting the accused to process, This form of conducting the accused to process is carried out when the accused has not been summoned to process and there is a need for caution where therefore he would have to request the order of apprehension. This form of driving by means of a summons is used in most crimes that are not ex officio pretrial detention.

II. Order to appear, through the public force, against the defendant who, having been previously summoned to a hearing, has not appeared, without any justification, and

Explanation: The summons arises or is updated when the defendant, having previously been summoned to appear without just cause, either due to a health disability or another disability that makes it impossible to attend the process is that he does not attend.

It is important to point out that it must be accredited in the previous hearing, that is, in the hearing where the justified cause of appearance has been decreed, who it is, the notifications have been made legally and therefore the formalities of the same have been complied with. with this in order to prove the true unjustification of the defendant to appear at that first hearing.

III. Arrest warrant against a person when the Public Prosecutor warns that there is a need for caution.

Explanation: The Public Prosecutor's Office may directly request that an arrest warrant be issued against any accused when there is a need for caution. And this is precisely when there is objective data that leads the prosecutor to consider that making a summons by means of a summons. will be withdrawn from the action of justice, as in the case of crimes that warrant preventive detention, as in cases in which the address is unknown, among other assumptions that the prosecution must assess and that at the time The control judge must assess in the same way and consider or, where appropriate, reject whether there is indeed a need for precautionary measures in the initial hearing and therefore issue the arrest warrant.

In the legal classification carried out by the Public Prosecutor's Office, the criminal type attributed, the degree of execution of the act, the form of intervention and the intentional or culpable nature of the conduct will be specified, without prejudice to the subsequent reclassification.

Explanation: Based on the principle of legal certainty that must exist for both parties and in particular for the accused, it is important that there is a broad detail of the criminal type that is intended to be attributed to the garage cushion, the form of intervention and the nature 22 and guilty of the conduct that is intended to be attributed, it is important to note that the legal classification is the one that can vary, however, the fact for which it is going to be charged is the one that must remain intact, since otherwise it will affect the defendant's defenses.

The apprehension of a person may also be ordered when he resists or evades the court appearance order and the crime for which he is charged deserves a custodial sentence.

Explanation: In the same way and the accused resists the judicial appearance, that is to say, that he performs objective acts and tends not to wish to appear in the process in a manner of judicial appearance, it is that the Public Ministry register this circumstance and therefore may go to the body jurisdiction and request the issuance of an arrest warrant against the accused.

The judicial authority will declare the defendant removed from the action of justice who, without justified cause, does not appear at a judicial summons, escapes from the establishment or place where he is detained or is absent from his home without notice, having the obligation to give it. In any case, the statement will lead to the issuance of an arrest warrant against the accused who has escaped from the action of justice.

Explanation: This declaration must obviously be made by the control judge upon request from the prosecution, the purpose is precisely for the judicial authority to know about the data that objectively establish the behavior of the accused that leads to the conclusion of declaring him stolen.

The Judge may issue a re-arrest order in the event that the Public Prosecutor requests it to detain an accused whose extradition to another country would have led to the suspension of criminal proceedings, when in the requesting State the procedure for which he was extradited has concluded.

Explanation: In this case, since the defendant has completed a pending process which he was serving in another country, it is that he request the intention to apprehend the country in which he was serving the sentence, with the purpose of complying in the country of origin. with pending criminal proceedings.

The Public Prosecutor's Office may request an arrest warrant in the event that a precautionary measure is not complied with, under the terms of article 174, and the Control Judge may issue it in the event that he deems it strictly necessary.

Explanation: In this paragraph, what is intended to guarantee, on the one hand, is that the purposes of the precautionary measures are fulfilled, giving them due supervision so that they are not breached, and on the other hand, the exceptionality that must prevail in restricting the freedom of transit of the accused, unless it is strictly necessary.

These theses and jurisprudence help to better interpret this article:

APPREHENSION ORDER IN THE ACCUSATORY AND ORAL CRIMINAL PROCEDURAL SYSTEM. EVEN WHEN THIS IS OF AN EXCEPTIONAL NATURE, THE CONTROL JUDGE MAY DECREE IT IN ACCORDANCE WITH ARTICLE 141, SECTION III, OF THE NATIONAL CODE OF CRIMINAL PROCEDURES WITHOUT THE NEED FOR A PRIOR APPOINTMENT OR APPEARANCE ORDER THROUGH THE PUBLIC FORCE, PROVIDED THAT THE MINISTRY PUBLIC SHOWS THE NEED FOR CAUTION. Article 141 of the National Code of Criminal Procedure establishes that when a complaint or complaint has been filed for an act that the law indicates as a crime, the Public Ministry announces that there are data in the investigation file that establish that the act has been committed and that there is the probability that the accused has committed it or participated in its commission, the control Judge, at the request of the Public Ministry, may order: summons the accused for the initial hearing (section I); order of appearance, through the public force, against the defendant who, having been previously summoned to a hearing, has not appeared, without any justification (section II); arrest warrant against a person when the Public Prosecutor warns that there is a need for precaution (section III); from which it can be deduced that the arrest warrant, as a way of conducting the accused to the process, has an exceptional character, because its origin is only updated once the summons and the respective order of appearance have not fulfilled their purpose; However, the control judge may order the arrest of the accused, without the need for a prior appointment or order to appear through the public force, as long as the Public Ministry demonstrates the need for caution, that is, that there are circumstances that show the possibility of evading the action of justice.

DECLARATION OF ABDUCTION TO THE ACTION OF JUSTICE IN THE NEW SYSTEM OF ACCUSATORY CRIMINAL JUSTICE. IN ORDER TO DECREE IT, IN ACCORDANCE WITH THE FOURTH PARAGRAPH OF ARTICLE 141 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, AN IMPUTATION SHOULD NECESSARILY BE FORMULATED. In accordance with the aforementioned precept and paragraph, the judicial authority will declare the defendant absent from the action of justice who, without just cause: 1) fail to appear for a court summons; 2) escapes from the establishment or place where he is detained; or, 3) is absent from home without notice, having the obligation to give it. Now, from the teleological interpretation of said normative portion, it is found that the first assumption is different from non-compliance with the summons contained in section I of the numeral itself, whose purpose is the appearance of the accused at the initial hearing, because it refers to any other subsequent summons; that is to say, when the defendant already had contact with the control Judge, at least, in the hearing

for the formulation of the accusation. It is estimated that way, because the following assumptions -2) he escapes from the establishment or place where he is detained; or, 3) is absent from his home without notice, having the obligation to give it-, imply a duty acquired by the accused to remain in a certain place or provide his address; that is, it is understood that in all three cases it has already submitted to the jurisdiction of the court and, therefore, has those obligations; consequently, to declare a defendant removed from the action of justice in the accusatory and oral criminal process, it is necessary that the summons that fails to comply unjustifiably is not the one provided for in section I of the cited article.

ORDER TO APPEAR WITH THE ASSISTANCE OF THE PUBLIC FORCE PROVIDED FOR IN ARTICLE 141, SECTION II, OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. UNJUSTIFIED CONTEMPORARY SUMMON TO TAKE THE DEFENDANT TO THE INITIAL HEARING, HAS AS A CONSEQUENCE THE RELEASE OF THAT, AND NOT THE DECLARATION THAT HE HAS BEEN ABSTRACTED FROM THE ACTION OF JUSTICE. Unjustified contempt of the summons to take the accused to the hearing The initial provision provided for in section I of article 141 of the National Code of Criminal Procedures, results in the issuance of the order to appear with the assistance of the public force referred to in section II of that precept, and not the declaration that has been removed from the action of justice, since if it were found otherwise, section II and the fourth paragraph of the article invoked would establish the same assumption (non-compliance with a subpoena) and it would be at the discretion of the Public Prosecutor's Office to decide whether to request a production order with help of the public force, or the declaration of removal from the action of justice and its consequent arrest warrant.

Article 142. Request for appearance or arrest warrants.

In the request for a summons or arrest warrant, a list of the facts attributed to the accused will be made, precisely supported by the corresponding records, and the reasons why it is considered that the requirements indicated in the previous article have been updated will be stated.

The requests will be formulated by any means that guarantees their authenticity, or in a private audience with the Control Judge.

Explanation: It is an established law that the control judges at the request of the public prosecutor are the ones who issue the aforementioned orders.

These must include the amount of evidence necessary for the purpose of being able to give elements to the judge to issue the arrest warrant (apprehension or appearance).

ARREST WARRANT. MINIMUM REQUIREMENTS THAT THE CERTIFICATE ISSUED BY THE CONTROL JUDGE MUST CONTAIN TO ACHIEVE ITS EXECUTION. The arrest warrant for its issuance, in accordance with the new criminal justice system, requires data that establishes that an act designated by law as a crime was

committed and that there is a probability that the defendant committed it or participated in its commission, that the objective is to place the detainee at the disposal of the control judge so that the Public Prosecutor's Office can formulate an accusation and express the corresponding evidence, so that the order of connection to the process is issued and the investigation is formalized. Thus, in order for the execution of the arrest warrant to be carried out, it is necessary for the control judge to provide the arresting elements with a certificate that contains the operative points of the determination that he issued orally, as well as a copy of the audio and a video of the relative hearing, which allows them to fully identify the governed and so that he or she can properly impose the decision that affects their right to personal liberty, therefore, the minimum requirements that the aforementioned record must contain are the following: a) the name and surname of the person to be detained; b) the criminal case initiated for their probable participation in the commission of an act that the law indicates as a crime, provided for and punished in the applicable substantive law; c) the control judge who pronounced it and d) the date it was issued. With such elements, legal certainty and security will be granted to the individual, and the prerogative of defense against an arrest that does not comply with the constitutional requirement will be ensured.

APPREHENSION ORDER IN THE CRIMINAL, ACCUSATORY AND ORAL JUSTICE SYSTEM. TO DECREE IT IN ACCORDANCE WITH ARTICLE 141, SECTION III, FOURTH PARAGRAPH, INFINE, OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, AGAINST THE DEFENDANT DECLARED MISSING THE ACTION OF JUSTICE, IT IS NECESSARY TO MAKE AN EXHAUSTIVE STUDY OF THE ELEMENTS OF THE CRIME AND OF THE PROBABLE INTERVENTION OF THE ONE IN HIS COMMISSION. When the defendant is declared removed from the action of justice for evading a judicial summons, the hypothesis provided for in article 141, section III, fourth paragraph, in fine, of the National Code of Criminal Procedures is updated, which establishes: "The authority The court will declare the defendant missing from the action of justice who, without justified cause, does not appear at a judicial summons, escapes from the establishment or place where he is detained or is absent from his home without notice, having the obligation to give it. case, the statement will lead to the issuance of an arrest warrant against the accused who has escaped from the action of justice. The Judge may issue a re-arrest order in the event that the Public Prosecutor requests it to detain a person. accused whose extradition to another country would have led to the suspension of criminal proceedings, when in the requesting State the procedure for which he was extradited has concluded. The Public Prosecutor's Office may request an arrest warrant in the event that a warrant is not complied with. precautionary measure, under the terms of article 174, and the control Judge may issue it in the event that he deems it strictly necessary.", which allows the issuance of an arrest warrant against the person who was declared removed from the action of justice, being sufficient for this, that the agent of the Public Ministry justifies that there is a need for caution, without requiring an exhaustive study of the elements of the crime and the probable intervention of the accused in its commission; level of demand that is consistent with the effects generated by said resolution, taking into account that

the arrest warrant is a precautionary and provisional measure that will be in force from the moment it is issued until the person against whom it was issued is located and it is made available to the Judge who issued it, to give way to the hearing to formulate the accusation, which must be done immediately, since once the person is located, the authority in charge of completing it must make it available to the court in the corresponding hearing room, to continue with the procedure related to the imputation, in order to issue, where appropriate, the order linking the process, the that it will constitute a subsequent authorization to continue with the investigation of the facts, in a formalized and judicialized manner; hence the deprivation of ambulatory freedom only occurs for the time in which the defendant is presented to a hearing, where in accordance with the principle of presumption of innocence, he must appear free in his person; That is why the arrest warrant in the accusatory and oral criminal procedure system, by itself, only constitutes an act through which the freedom of movement of the accused is provisionally restricted and its purpose is, where appropriate, to move to a second stage of investigation supervised by the judicial authority, once the accusation has been made and the order of connection to the process has been issued; especially that when a crime is attributed to him that does not require informal imprisonment, where appropriate, a different precautionary measure may be issued.

Article 143. Resolution on the request for an arrest warrant or appearance.

The Control Judge will resolve the request for an arrest warrant or appearance at a hearing, or through the computer system; in both cases with due secrecy, and will rule on each of the elements raised in the request.

In the first case, the request must be resolved at the same hearing, which will be set within twenty-four hours from the request, exclusively with the presence of the Public Ministry.

In the second case, within a maximum period of twenty-four hours, following the moment the request was received.

In the event that the request for an arrest warrant or appearance does not meet any of the applicable requirements, the Control Judge will warn the Public Ministry at the same hearing or through the computer system to make the corresponding details or clarifications, before which the The control judge may give a different legal classification to the facts that arise or to the participation that the accused had in them.

The arrest warrant will not be granted when the control judge considers that the facts indicated by the Public Prosecutor's Office in its request do not constitute a crime.

If the resolution is recorded by means other than writing, the operative points of the arrest warrant must be transcribed and delivered to the Public Ministry.

Explanation: The logic of the criminal procedure for the purpose of scheduling the arrest warrant within a period of 24 hours rests on the idea of haste and the need to bring criminal action as soon as possible, due to the fact that the public

prosecutor uses this exceptional cause for presentation to the initial hearing when it is proven that there is a need for precaution.

Article 144. Withdrawal of criminal action.

The Public Ministry may request the withdrawal of the criminal action at any stage of the procedure, until before the second instance resolution is issued.

The withdrawal request must have the authorization of the Head of the Attorney General's Office or the official who delegates that power to him.

The Public Prosecutor's Office will present briefly in a hearing before the Control Judge, Prosecution Court or Court of Appeal, the reasons for the withdrawal of the criminal action.

The judicial authority will resolve immediately and decree the dismissal. In case of withdrawal of the criminal action, the victim or offended party may challenge the resolution issued by the control judge, trial court or appellate court.

Explanation: The public prosecutor, as holder of the monopoly of criminal action, will at all times have the power to dismiss the matter if it considers that a cause for it is updated, for which the grounds for dismissal established in numeral 327 of the code must be verified. national criminal proceedings.

Only one limitation and exception is established, which is precisely that the magistrates have not ruled on the appeal against the oral trial ruling.

On the other hand, the reasons for which it is considered that criminal action should not be carried out for such facts must be well founded.

Article 145. Execution and cancellation of the summons and arrest warrant.

The arrest warrant will be delivered physically or electronically to the Public Ministry, who will execute it through the Police. Police officers who execute a judicial arrest warrant shall immediately place the detainee at the disposal of the control judge who issued the order, in an area other than the one designated for the fulfillment of pretrial detention or custodial sentences, informing him about of the date, time and place in which it was carried out, and must, in turn, deliver a copy of it to the accused.

The police officers must immediately inform the Public Prosecutor's Office about the execution of the arrest warrant so that it requests the holding of the initial hearing from the formulation of the imputation.

Police officers who execute a court order to appear shall immediately place the accused at the disposal of the control judge who issued the order, in the room where the charge is to be made, on the date and time indicated for such purposes.

The Police must inform the Public Prosecutor's Office about the date, time and place in which the order was carried out, and must, in turn, deliver a copy of the order to the accused.

When for any reason the Police could not execute the order to appear, they must inform the Control Judge and the Public Ministry, on the date and time indicated for holding the initial hearing.

The Public Prosecutor's Office may request the cancellation of an arrest warrant or the reclassification of the conduct or fact for which the criminal action had been brought, when it deems its inadmissibility due to the appearance of new data.

The request for cancellation must have the authorization of the head of the Attorney General's Office or the official who delegates this power to him.

The Public Prosecutor's Office will request a private hearing before the Control Judge in which he will formulate his request exposing the new data; the Control Judge will decide immediately.

The cancellation does not prevent the investigation from continuing and the subsequent request for an arrest warrant again, except that due to the nature of the fact on which the cancellation is based, the process must be dismissed.

The cancellation of the arrest warrant may be appealed by the victim or the offended party.

SECTION II: flagrancy and urgent case

Article 146. Cases of instant arrest.

A person may be detained without a warrant in the event of crime. It is understood that there is flagrante when:

I. The person is arrested at the time of committing a crime, or

II. Immediately after committing it, she is arrested, by virtue of the fact that:

a) Is caught committing the crime and is materially and uninterruptedly persecuted, or

b) When the person is pointed out by the victim or offended, an eyewitness of the facts or who has intervened with her in the commission of the crime and when she has in her possession instruments, objects, products of the crime or has information or indications that make it reasonably presumed that he intervened in it.

For the purposes of section II, subparagraph b), of this precept, it is considered that the person has been arrested in crime for signalling, as long as, immediately after committing the crime, his search or location has not been interrupted.

Explanation: In the first of the cases, that is to say "The person is arrested at the time of committing a crime" must be understood at this point and even more applied when the arrest is made when a criminal act is materializing in that same one, that the criminal act has not been completed and that it is so evident that no one has any doubt that a criminal act is being carried out. An example of that would be the time when a person is stealing a lady's bag.

In the second fraction, subparagraph a) arouses the affirmation that in order for this assumption of crime to be updated, the following assumptions must necessarily occur:

It had to have been the person accused of a crime.

She must have been persecuted at that very moment and detained either by a citizen and subsequently handed over to the competent authority, or failing that, detained by the police.

And in relation to what is established in subparagraph b) the following assumptions must be made:

that the person accused of having committed an illegal act has been seen by someone, either the victim or witnesses.

That person has instruments or physical or clothing characteristics that they carry that give certainty that the person who is being detained is very likely the same person who was pointed out.

Due to this point, so that the crime can be updated in this case, it is important that the search or location work is not suspended.

The Supreme Court of Justice has already ruled on what should be understood by this point, since it does not address a temporal issue but rather actions aimed at finding the indicated person, that is, hours may pass after having committed the probable illegal act and as long as the search for the person is not suspended, it is that you can continue updating this assumption.

DETENTION IN FLAGRANCE. IT IS UPDATED IF WHEN SEEKING A PASSENGER ENTERING THE COUNTRY THROUGH AN INTERNATIONAL TERMINAL, IT IS NOTICED THAT THEY HAVE PROHIBITED SUBSTANCES WITHIN THEIR ORGANISM (NARCOTICS), EVEN WHEN TECHNOLOGICAL DEVICES, SUCH AS "X" RAYS, ARE USED TO VERIFY THEM. crimes is a function of the State, in accordance with article 21 of the Political Constitution of the United Mexican States; hence, when a person enters the country, through an international terminal, coming from another nation, it is logical that there is an ex-professed surveillance established for national security, which justifies carrying out a screening of passengers at any access point, with the purpose of purpose of preventing the probable commission of a crime, to the extent that the priority of said police authority is to protect the borders, preventing the entry of foreigners who do not comply with the regulations, the entry of merchandise without the control or payment of the respective tariffs and, of course, the introduction of substances prohibited by law -narcotics-, for this reason it is feasible to establish that the captive agents can practice a greater interference, in order to fulfill the function entrusted to them, based on derived objective elements of the circumstances of mode, time and place of the event that they perceive. So, the levels of contact are not affected when a person arrives in national territory, and from the mechanics of the facts it can be seen that from a point out that he has drugs in his body, since it is an extreme situation, it is evident that the use of technological devices such as "X" rays is the ideal way to verify that it has them inside, without this being enough to consider that flagrant crime does not occur, which is updated when you enter the country with forbidden substances.

FLAGRANCE "BY SIGNALING". ARTICLE 146, SECTION II, ITEM B), OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, WHICH AUTHORIZES THE ARREST OF A PERSON UNDER SUCH CASE, DOES NOT CONFIGURE THE HYPOTHESIS OF "EQUIPARATED FAILURE". Article 16, fifth paragraph, of the Political Constitution of the United Mexican States provides that crime exists when the person is arrested at the time of committing the crime or immediately after. For its part, article 146, section II, subparagraph b), of the National Code of Penal Procedures, allows validating the detention of a person under the hypothesis of crime "by signaling", if the following conditions concur, that: a) The victim or offended, an eyewitness of the facts or whoever had intervened in the commission of the crime, indicate the accused; b) The latter has in his possession the object, instrument or proceeds of the crime or has information or indications that lead to a well-founded presumption of his intervention; and, c) The foregoing occurs

immediately after committing the crime, without interrupting its search or location. However, a strict interpretation of this last provision, which is favorable to the human rights of personal liberty, legal security and legality, does not allow validating the arrest of the accused under the figure known as "equal crime", since said This precept does not configure it, since it clearly establishes as a condition a requirement of temporal immediacy, which suppresses the possibility that people may be detained after hours or days after the commission of the facts. That is, "immediately after" is not an open concept, which can be separated indefinitely from the moment of commission of the act, since it maintains the idea of maximum proximity to the execution of the crime, and only allows validating arrests in cases in which, instead of material persecution, there is a signaling, which must be, like the arrest of the person itself, immediate to the criminal act, in addition to concur with the various requirement that the search and/or location had not been interrupted.

Article 147. Detention in instant arrrest.

Any person may detain another in the commission of a instant arrest, having to immediately hand over the detainee to the nearest authority and this one with the same promptness to the Public Prosecutor's Office.

The public security forces will be obliged to arrest those who commit a flagrant crime and will register the arrest.

The inspection carried out by the security forces on the accused must be conducted in accordance with the guidelines established for this purpose in this Code.

In this case or when they receive a detained person from any person or authority, they must immediately bring it before the Public Ministry, who will register the time at which they are making it available.

Article 148. Detention for crimes that require a complaint.

When a person is arrested for an act that could constitute a crime that requires a complaint from the offended party, whoever can present it will be informed immediately. For this purpose, a reasonable period of time will be granted, according to the circumstances of the case, which in no event may be greater than twelve hours, counted from the date the victim or offended party was notified or twenty-four hours from their arrest in if it is not possible to locate it. If after these deadlines the complaint is not filed, the detainee will be released immediately.

In the event that the victim or offended party is physically unable to file a complaint, the legal term for the defendant's detention will expire. In this case, it will be the relatives by consanguinity up to the third degree or by affinity in the first degree, who will be able to legitimize the complaint, regardless of whether the victim or offended party ratifies it or not later.

Explanation: When a person has been arrested instantly and the crime deserves a custodial sentence, the public prosecutor must immediately notify the victim or offended party of the need to go to the ministerial authority to present his complaint. which is nothing more than his expression of will for the investigation to continue its course and, if applicable, criminal action to be taken if there are elements to do so.

The general rule is precisely that the victim, at the time of being notified, is given 12 hours to make his complaint, let's remember that the article is very clear when stating that it is 12 hours after notification, let's give the following example

A) Time to notify the victim about their right to file a complaint: 5:00 p.m. on November 25, 2018

B) Maximum time to file a complaint: 05:00 hours on November 26, 2018

However, in no case will it be more than 24 hours from the arrest of the accused, let's see the following example:

A) Time of arrest of the accused: 06:00 hours on May 12, 2019

B) Time of making available: 09:00 hours on May 12, 2019

C) Fatal time to file a complaint and be able to retain the accused up to the maximum period (48 hours): 06:00 hours on May 13, 2019

Be careful, the article is clear when stating that the 24 hours will be counted from the arrest of the accused, not from the availability of the same, so if the public prosecutor retains him under that assumption, immediate release must be requested.

Article 149. Verification of instant crime of the Public Ministry.

In cases of instant crime, the Public Ministry must examine the conditions in which the arrest was made immediately after the person is made available. If the arrest was not carried out in accordance with the provisions of the Constitution and this Code, it will order the immediate release of the person and, where appropriate, will ensure the application of the corresponding disciplinary or criminal sanctions.

Also, during the retention period, the Public Prosecutor's Office will analyze the need for said measure and carry out the investigative acts it deems necessary to, where appropriate, bring criminal action.

Explanation: The public ministry must be very cautious when it comes to qualifying the detention and determining if it was carried out in accordance with the law. It is for this that in accordance with the provisions of article 146 of the same code, it must be verified that it has been carried out under one of all the aforementioned

assumptions, since if it is not done, there may be responsibility on the part of the public prosecutor.

Article 150. Case of urgent case.

Only in urgent cases the Public Prosecutor's Office may, under its responsibility and based on and expressing the evidence that motivates its action, order the arrest of a person, as long as the following assumptions concur:

I. There are data that establish the existence of an act designated as a serious crime and that there is a probability that the person committed it or participated in its commission. For the purposes of arrest in an urgent case, the offenses indicated as informal pretrial detention in this Code or in the applicable legislation, as well as those whose arithmetic average term is greater than five years in prison, are classified as serious;

Explanation: As one of the assumptions to be able to consider that we are facing an urgent case, the public prosecutor can only do it when we are with crimes of informal preventive detention, which are indicated in article 19 of the Constitution and in article 167 of this code, or where appropriate, that the crime added the minimum and the maximum that establishes the penalty of at least 5 years.

Example to determine the arithmetic mean.

Crime of vehicle theft: Minimum penalty 5 years and maximum penalty 12 years

Sum: 5 + 12 = 17 /2 = 8.5 years (if this fraction can be considered satisfied, it is not yet a crime of ex officio preventive detention.

II. There is a well-founded risk that the accused may evade the action of justice, and

Explanation: the assumptions of abduction are indicated in article 168 of the national code of criminal procedures, so if one or both of them are updated, this fraction is satisfied.

III. Due to the time, place or any other circumstance, it cannot occur before the judicial authority, or that if it does, the accused can evade.

Explanation: Given this circumstance, what the ministerial authority has to prove is whether or not it can go before the control judge, either for any reason, or that on the other hand, the delay of the same may be enough time for the defendant may evade justice.

The crimes provided for in section I of this article will be considered serious, even in the case of a punishable attempt.

Police officers who execute an arrest warrant in an urgent case must record the arrest and immediately present the accused to the Public Prosecutor who issued said order, who will ensure that the accused is presented without delay before the Judge of control.

The control Judge will determine the legality of the mandate of the Public Ministry and its compliance when carrying out the control of the detention. Violation of this provision will be penalized in accordance with the applicable provisions and the detained person will be released immediately.

For the purposes of this article, the arithmetic mean term is the quotient obtained by adding the minimum and maximum prison sentence for the consummated crime in question and dividing it by two.

Article 151. Consular assistance.

In the event that the detainee is a foreigner, the Public Ministry will notify him without delay and will guarantee his right to receive consular assistance, for which he will be allowed to communicate with the Embassies or Consulates of the country with respect to which he is a national; and must notify the Embassies or Consulates of the arrest of said person, recording proof of it, unless the accused accompanied by his Defender expressly requests that this notification not be made.

The Public Prosecutor's Office and the Police must inform whoever requests it, after identification, if a foreigner is detained and, if applicable, the authority at whose disposal he is and the reason.

Explanation: Immediately upon finding a person deprived of their liberty due to criminal crime or urgent case, the public prosecutor must make a telephone call or personal notification in case the embassy or consulted is in the place where the investigation is carried out. carried out, this with the intention of complying with international protocols and treaties signed by the Mexican state.

Failure to carry out this action may lead to violating the formalities of the process.

NOTIFICATION, CONTACT AND CONSULAR ASSISTANCE OF DETAINED MEXICAN PERSONS WHO HAVE DUAL OR MULTIPLE NATIONALITY. THE AUTHORITY CANNOT TAKE INTO ACCOUNT ELEMENTS OF ALLEGED NATIONAL BELONGING TO DENY THAT HUMAN RIGHT.When a person with dual or multiple nationality -one of them being Mexican- is detained, the authorities cannot evaluate elements of alleged national belonging of said person -such as language, residence, family ties, etc.- to deny said right, because it is a human right that must always be recognized. Thus, in the case of a person with double or multiple nationality -one of them being Mexican-, this First Chamber of the Supreme Court of Justice of the Nation considers that no authority -police, investigative or judicial- can presume that whoever has Mexican nationality, for that simple fact, finds the element related to cultural idiosyncrasy covered. Neither can the fact that the detained person speaks Spanish be considered, since this would fall into the absurdity that no Spanish-speaking person could have access to their right to consular assistance. In this sense, this First Chamber has stated that the aforementioned right does not depend on the foreigner's knowledge of the language of the country in which he has been detained. However, knowledge of

culture cannot be a determining element for the law either, since in addition to the complexity of defining Mexican culture and what it would comprise, it would suffice to prove that a foreigner was a national of a country with a cultural similarity to Mexico or that If not, he would have lived a long time in our country to assimilate the culture. Residence in the national territory cannot be considered either, since it would be enough for a foreigner (without Mexican nationality) to have lived in the country for some time to deny him his right to consular assistance. Family ties in the country cannot be decisive either, since many foreigners -without Mexican nationality- could have family in Mexico, which would not negate their right. Therefore, the only thing that the judicial authority could take into account -and only to determine the effects in a specific case in which said right has been violated- is whether, based on the right to due process and access to effective protection , said person had at his disposal adequate means of defense. This does not prevent that, regardless of whether the person with dual or multiple nationality had had an adequate defense, upon verification of the failure to recognize their right, access to it is guaranteed immediately, at any stage of the process.

NOTIFICATION, CONTACT AND CONSULAR ASSISTANCE. NO DISTINCTION MAY BE MADE IN THE RECOGNITION OF THIS RIGHT TO MEXICAN DETAINED PERSONS WHO HAVE DUAL OR MULTIPLE NATIONALITY.No distinction can be made in the recognition of the right to consular notification, contact and assistance when the detained person, in addition to being a national of a foreign State, is a national of the receiving State (in this case, Mexican). Said decision is consistent with the development of international human rights law, which grants legal protection to people, even before a country in which they are also nationals. In addition, dual or multiple nationality, recognized in articles 30 and 32 of the Political Constitution of the United Mexican States, cannot be seen as if it were contrary to the human right to consular notification, contact and assistance, but rather, on the contrary, as a prerogative compatible with that right. Consequently, the reference human right cannot be displaced by the fact that a person has, in addition to a foreign nationality, Mexican. Understanding said human right as something that can be displaced or eliminated by another protective condition is incompatible with the pro person principle recognized in article 1. constitutional.

Article 152. Rights that assist the arrested person

The authorities that execute an arrest for instant crime or in an urgent case must ensure that the person has full and clear knowledge of the exercise of the rights mentioned below, at any stage of the custody period:

I. The right to inform someone of her detention;

II. The right to consult privately with his Advocate;

III. The right to receive a written notification that establishes the rights established in the previous sections and the measures that he must take to obtain legal advice;

IV. The right to be placed in a cell in decent conditions and with access to personal hygiene;

V. The right not to be detained naked or in intimate clothing;

VI. When, for the purposes of the investigation, it is necessary for the detainee to hand over his clothes, he will be provided with clothing, and

VII. The right to receive clinical care if he has a physical illness, is injured, or appears to be suffering from a mental disorder.

Explanation: Every time a person is detained by any of the above-mentioned procedural figures (in instant cirme or urgent case), a reading of their constitutional and procedural rights must be carried out, this rests on the logic of the right to defense enshrined in articles 18, 19 and 20, section B of the Political Constitution of the United Mexican States, the same right that begins from the first moment in which an act of nuisance is carried out, such as being arrested, which applies to the specific case.

CHAPTER IV: PRECAUTIONARY MEASURES

SECTION I: General disposition

Article 153. General rules of precautionary measures.

The precautionary measures will be imposed by judicial decision, for the time necessary to ensure the presence of the accused in the proceedings, guarantee the safety of the victim or offended party or the witness, or avoid hindering the proceedings.

It will correspond to the competent authorities of the Federation and of the federative entities, for precautionary measures, to monitor that the mandate of the judicial authority is duly fulfilled.

Explanation: The precautionary measures are accessory to the ordinary trial, that is to say, they cannot be imposed nor can they subsist if there is no criminal process against any person.

It is important to point out that the precautionary measures have a merely precautionary purpose within the process, that is, what they seek is to guarantee that the process continues its course without major problems, such as the accused not appearing, that the accused himself endangers the victim or the investigation.

Article 154. Origin of precautionary measures.

The Judge may impose precautionary measures at the request of the Public Prosecutor or the victim or offended party, in the cases provided for by this Code, when the following circumstances occur:

I. Formulated the imputation, the defendant himself accepts the constitutional term, be it a duration of seventy-two hours or one hundred and forty-four, as the case may be, or

II. The defendant has been linked to the process.

In the event that the Public Prosecutor, the victim, the legal adviser, or the offended party, requests a precautionary measure during the constitutional term, said matter must be resolved immediately after the imputation is formulated. For this purpose, the parties may offer the pertinent means of proof to analyze the origin of the requested measure, as long as it is capable of being resolved in the following twenty-four hours.

Article 155. Types of precautionary measures.

At the request of the Public Ministry or the victim or offended party, the judge may impose one or more of the following precautionary measures on the accused:

I. The periodic presentation before the judge or before a different authority that he designates;

II. The exhibition of an economic guarantee;

III. The embargo of assets;

IV. The immobilization of accounts and other values that are within the financial system;

V. The prohibition to leave without authorization from the country, from the town in which he resides or from the territorial area established by the judge;

VI. Submission to the care or surveillance of a specific person or institution or placement in a specific institution;

VII. The prohibition of attending certain meetings or approaching or certain places;

VIII. The prohibition to live, approach or communicate with certain people, with the victims or offended or witnesses, provided that the right to defense is not affected;

IX. Immediate separation from home;

X. The temporary suspension in the exercise of the position when a crime committed by public servants is attributed to him;

XI. The temporary suspension in the exercise of a certain professional or labor activity;

XII. The placement of electronic locators;

XIII. The shelter in your own home with the modalities that the judge has, or

XIV. Pretrial detention.

Precautionary measures may not be used as a means to obtain an acknowledgment of guilt or as an anticipated criminal sanction.

Article 156. Proportionality.

The Control Judge, when imposing one or more of the precautionary measures provided for in this Code, must take into consideration the arguments that the parties offer or the justification that the Public Ministry makes, applying the criterion of minimum intervention according to the particular circumstances of each person, in terms of the provisions of article 19 of the Constitution.

To determine the suitability and proportionality of the measure, the risk assessment analysis carried out by specialized personnel in the matter may be taken into consideration, in an objective, impartial and neutral manner in terms of the applicable legislation. In the respective resolution, the Judge The control officer must justify the reasons why the precautionary measure imposed is the one that is least harmful to the accused.

Explanation: Precautionary measures are an exceptional measure, so they are only imposed when the appearance of the defendant at the trial is at risk or the safety of the victim or witnesses is in danger.

In this order of ideas, these measures, if imposed, must be imposed at all times from minor to major, that is, it must be analyzed whether a less harmful measure of those stated in article 155 can guarantee the purposes of the process mentioned above.

Finally, in the event that the judicial measures authority carries out a risk assessment, which within its content will mainly establish the degree of risk of subtraction from the action of justice, through a questionnaire, as well as socioeconomic studies of its social environment. and family, is that under this situation it could be a reference for the judge for the purpose of making the decision of which precautionary measure is the most appropriate for its imposition.

Article 157. Imposition of precautionary measures

Requests for precautionary measures will be resolved by the Control Judge, in audience and with the presence of the parties.

The Control Judge may impose one of the precautionary measures provided for in this Code, or combine several of them as appropriate to the case, or impose a different one from the one requested as long as it is not more serious. Only the Public Ministry may request preventive detention, which may not be combined with other precautionary measures provided for in this Code, except for the precautionary seizure or the immobilization of accounts and other values that are in the financial system.

In no case is the Control Judge authorized to apply precautionary measures without taking into account the object or purpose thereof or to apply more serious measures than those provided for in this Code.

Explanation: Precautionary measures are resolved through judicial control, that is, they cannot be imposed without there being a defensive position that can counter-argue their imposition, or failing that, indicate that others would be more appropriate for the specific case.

In the event that the case justifies the need for more than one precautionary measure to be imposed, such as: not approaching the victim and not leaving the city, these will be appropriate justifying why, obviously taking into account the nature of the circumstances surrounding the crime.

In the case of preventive detention, in this case it can only be combined with sections III and IV of the national code of criminal procedures.

Article 158. Discussion of precautionary measures.

Formulated the imputation, in its case, or dictated the order of connection to the process at the request of the Public Ministry, the victim or the defense, the matter related to the need to impose or modify precautionary measures will be discussed.

Explanation: The debate on precautionary measures will be carried out as a general rule after the accused has been linked to the process, however, in cases in which preventive detention is going to be requested and the accused requests the extension of the constitutional term to carry out acts of defense, it is that it will be discussed before the conclusion of the initial hearing on the precautionary measures.

Article 159. Content of the resolution.

The resolution establishing a precautionary measure must contain at least the following:

I. The imposition of the precautionary measure and the justification that motivated its establishment;

Explanation: based on the obligation of the judge to found and motivate his decisions, he must at that moment and orally justify the reason for the imposition of the precautionary measure, having to observe at all times the proportionality and rationality of the precautionary measure imposed.

II. The guidelines for the application of the measure, and

Explanation: It is important that in a didactic way the judge explains to the defendant the actions that he will have to do or stop doing in order to comply with the precautionary measure imposed.

III. The validity of the measure.

Explanation: As the section itself says, all precautionary measures are temporary and are intended to protect the process and guarantee the appearance of the accused and respect for the rights of the victim, so the validity must be set by the judge.

Article 160. Challenging judicial decisions.

All judicial decisions related to precautionary measures regulated by this Code are appealable.

Article 161. Review of the measure.

When the conditions that justified the imposition of a precautionary measure have objectively changed, the parties may request the Court to revoke, replace or modify it, for which the Court will summon all those involved to a hearing with in order to open a debate

on the subsistence of the conditions or circumstances that were taken into account to impose the measure and the need, where appropriate, to maintain it and resolve accordingly.

Explanation: At any time after a precautionary measure has been imposed, a request may be made to change it, due to the change in the arguments that justified its imposition, or failing that, new evidence or unspecified evidence that the judge could not assess at the time for the purposes of issuing the precautionary measure already indicated.

Revocation of the precautionary measure is understood as the total elimination of any of the measures imposed, this by virtue of the fact that there is no longer sufficient reason for it to continue in force.

Modification of precautionary measure must be understood as the change of one measure for another due to having varied the arguments that served as the basis to impose it.

In this case, if the public ministry regularly requests a modification, it will be to request a more serious one, for having failed to comply with the one already imposed.

In the case of the defense, it will regularly be requested for the purpose of imposing a less burdensome one.

These judicial criteria will help to better interpret this article:

REVIEW OF PRECAUTIONARY MEASURES. IF THE DEFENDANT WAS IMPOSED ONE DIFFERENT FROM PRE-RETAINMENT, THE CONTROL JUDGE, WHEN CARRYING OUT THAT, CANNOT MODIFY IT TO IMPOSE INFORMAL PRE-RETAINMENT, UNDER THE ARGUMENT THAT IN THE SUPPLEMENTARY INVESTIGATION EVIDENCE DATA EMERGED WHICH JUSTIFY ITS IMPOSITION BECAUSE, DOING SO VIOLATES YOUR RIGHT TO LEGAL SECURITY.*Articles 19, second paragraph, of the Political Constitution of the United Mexican States and 167, third paragraph, of the National Code of Criminal Procedures, provide exhaustively the cases in which the judge must impose informal preventive detention, for which, it must be based in the facts of the order of link to process or of the formulation of imputation, in its case; Therefore, if a precautionary measure other than preventive detention was imposed on the accused, in a review of precautionary measures, the control judge cannot modify it to impose informal preventive detention, on the grounds that data emerged in the complementary investigation. of evidence that justify its imposition, since this would imply changing the facts, or the preliminary legal classification for which the order of link to the process was issued, which violates the fundamental right of legal security of the accused, since this, in any case, It must be a matter of analysis in the initial hearing where they are imposed, in the order of linking to the process, or in the respective appeal.*

REVIEW OF THE PRECAUTIONARY MEASURE OF PRE-trial detention, PROVIDED FOR IN THE FIFTH TRANSITORY ARTICLE OF THE DECREE TO AMEND, ADD, AND REPEAL SEVERAL PROVISIONS, AMONG OTHERS, OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, PUBLISHED IN THE OFFICIAL GAZETTE OF THE FEDERATION ON 17 JANUARY JUNE 2016. IT MUST BE CARRIED OUT IN OBSERVANCE OF THE CHARACTERISTIC OF ORALITY AND UNDER THE PRINCIPLES OF PUBLICITY, CONTRADICTION, CONCENTRATION, CONTINUITY AND IMMEDIATION, WHICH DISTINGUISH THE ACCUSATORY CRIMINAL PROCESS. ***From the aforementioned fifth transitory article, it is noted that, having allowed the legislator that the measures of deprivation of personal liberty or preventive detention, decreed by a judicial authority in proceedings initiated prior to the entry into force of the new accusatory criminal justice system, be submitted to review, based on its regulatory framework – articles 153 to 171 of the National Code of Criminal Procedures -, where the Judge of the cause with exceptional competence for it, once the accused has requested it, will give hearing to the parties so that the Public Prosecutor's Office investigates and proves what is relevant, for after it has been carried out the corresponding hearing and taking into consideration the risk assessment, decide on the imposition, revision, substitution, modification or cessation of said measure, in terms of article 19 of the Political Constitution of the United Mexican States, as well as the code itself, it is makes it evident that said review must be carried out under the dynamics of the accusatory criminal process, that is, in observance of the characteristic of orality and under the principles of publicity, contradiction, concentration, continuity and immediacy, which distinguish it. This is so, because it is no longer a unilateral decision of the judge, as was the***

case in provisional release under bail, where it was limited to verifying whether or not the legal requirements for its origin were fulfilled, but now the pronouncement of the court must be preceded by a debate between the parties, regarding an issue submitted to a contradictory in which they must be heard by holding a hearing and determine which precautionary measure is appropriate for the specific case.

Article 162. Hearing for review of precautionary measures.

If the request for review is not rejected outright, the hearing will take place within the following forty-eight hours from the presentation of the request.

Explanation: The imposition of precautionary measures represents at all times an interference with the freedom of movement of any defendant, therefore, based on this, the hearing must be scheduled immediately, since if there is no cause or sufficient reason for that measure to persist, be revoked or modified.

Article 163. Evidence for the imposition and review of the measure.

The parties can invoke data or offer means of proof so that the precautionary measure is imposed, confirmed, modified or revoked, as the case may be.

Explanation: It is important to note that in case of requesting a review of the measure, evidence can be included.

Pursuant to article 261 test data must be understood as any record that provides information, such as an electricity bill, a contract, etc.

The means of proof refers to the source that will provide the information, that is, the appearance of witnesses, experts for the purpose of rendering their statement.

Article 164. Evaluation and supervision of precautionary measures.

The evaluation and supervision of precautionary measures other than preventive detention will correspond to the supervisory authority of precautionary measures and the conditional suspension of the process, which will be governed by the principles of neutrality, objectivity, impartiality and confidentiality.

The information that is collected as a result of the risk assessment cannot be used for the investigation of the crime and cannot be provided to the Public Ministry. The foregoing, except in the case of a crime that is in progress or its commission is imminent, and endangers the personal integrity or life of a person, the interviewer will be relieved of the duty of confidentiality and may disclose it to the agents in charge of criminal prosecution.

To decide on the need to impose or review precautionary measures, the supervisory authority for precautionary measures and the conditional suspension of the process will provide the parties with the necessary information for this, so that they can make the corresponding request to the Court. .

For this purpose, the supervisory authority for precautionary measures and the conditional suspension of the process, will have access to the systems and databases of the National Information System and others of a public nature, and will have a database to monitor the compliance with precautionary measures other than preventive detention.

The parties may obtain the information available from the competent authority when requested, prior to the hearing to discuss the request for precautionary measure.

The supervision of preventive detention will be in charge of the penitentiary authority in the terms of the law of the matter.

Explanation: In each federal entity, as well as in the federation, there must be a department in charge of reviewing and evaluating the precautionary measures that are imposed on the accused.

What the risk assessment opinion will do is point out, through the provisions of article 168 of the code, the defendant's risk of subtraction from the action of justice and will recommend the precautionary measure to be imposed.

It is an obligation for the supervisory authority to grant the study carried out to the parties, since this will serve for the purpose of imposing precautionary measures.

Any of the parties may obtain information in possession of the authority and supervision in order to be able to generate a more solid debate and argument now that the hearing for the debate on precautionary measures is held.

In relation to preventive detention, in this case, the supervisory authority will not be competent to review it, but will be the prison authority.

Article 165. Application of preventive detention.

Only for a crime that deserves a custodial sentence will there be a place in pretrial detention. Pretrial detention will be ordered in accordance with the terms and conditions of this Code.

Pretrial detention may not exceed the time that the law establishes as a maximum penalty for the crime that will motivate the process and in no case will it exceed two years, unless its extension is due to the exercise of the defendant's right to defense. If this term has not been reached, a sentence has not been pronounced, the accused will be released immediately while the process continues, without this preventing the imposition of other precautionary measures.

Explanation: Preventive detention cannot be applied for crimes that do not have a prison sentence, or an alternative sentence, such as threats.

No person may be held in pretrial detention for more than two years for reasons attributable to the state, such as not scheduling hearings, unjustified delays in the process, among others.

In the event that this circumstance occurs, that is to say, that more than two years of unjustified preventive detention have passed, the control judge, or the prosecution court in his case, must immediately release the accused.

These judicial criteria will help to better interpret this article:

PREVENTIVE PRISON. IT IS APPROPRIATE TO ORDER THEIR TERMINATION AND THE IMPOSITION OF A DIFFERENT PRECAUTIONARY MEASURE, WHEN ITS DURATION HAS EXCEEDED THE TERM OF TWO YEARS, WITHOUT THIS DERIVED FROM THE EXERCISE OF THE RIGHT OF DEFENSE OF THE IMPUTED, BUT FROM ANOTHER CIRCUMSTANCE, SUCH AS THE SOLUTION OF A JURISDICTIONAL DISPUTE THAT CAUSED IN THE CAUSE. Although it is true that one of the prerogatives that safeguards the right to defense consists of being heard with due guarantees by a "competent", independent and impartial judge or tribunal, it is also true that if within the stage of investigation of the accusatory criminal system (in its formalized phase) or, intermediate, the responsible authority has determined to inhibit or decline to hear the matter in favor of another jurisdictional body, and its processing in said stages is subject to the Judge who declined to accept or reject the competence that was raised, this is not an obstacle to disregard the rights that assist the accused, nor force them to remain in preventive detention until said procedural budget is settled, especially when this, given its nature, prevents those

exercise the right to defense that assists them. The foregoing is so, since preventive detention (informal or justified) is an exceptional precautionary measure that ensures the presence of the accused in the process, which is governed, among others, under the provisional principle, as it is in force while not change the assumptions on which its imposition was based or the respective sentence is issued, it must be considered that, by imperative of article 20, section B, section IX, of the Political Constitution of the United Mexican States, the authority cannot prolong it beyond the time that the law establishes as the maximum penalty for the crime that motivated the process and, in no case, more than two years, which implies that if the procedure was suspended due to a jurisdictional conflict or some other procedural budget that not only limits , but it makes impossible the full satisfaction of the right to an adequate defense of the accused, its extension is not justified; hence, the court must order his cessation, and immediately release the accused while the process continues; without this preventing him from imposing, after discussion, other precautionary measures that guarantee his presence during the criminal proceedings against him, which is consistent with the principle of presumption of innocence that all defendants must enjoy.

Article 166. Exceptions.

In the event that the defendant is a person over seventy years of age or affected by a serious or terminal illness, the Court may order that preventive detention be carried out at the home of the accused or, if applicable, in a medical or geriatric center, under the appropriate precautionary measures.

In the same way, the provisions of the previous paragraph shall apply in the case of pregnant women or mothers during lactation.

They will not enjoy the prerogative provided for in the two previous paragraphs, those who, at the discretion of the Control Judge, can evade the action of justice or manifest a conduct that makes their social risk presumable.

Explanation: As an exceptional rule, in the event of one or both of the following cases, preventive detention may be dispensed with:

Being over 70 years of age: If the defendant or defendant is over 70 years of age, preventive detention may be requested at home.

The law does not indicate an additional requirement for the purpose of modifying the precautionary measure in question, so once this requirement is met, it may be requested that the older person be decreed rooted.

Having a serious illness: In the same way, having a serious illness is another assumption for the purposes that the exceptionality of preventive detention can be carried out.

In this case, as a general rule, the judge will order that she be taken to a medical center with the appropriate security measures so that she does not escape from the action of justice.

Pregnant women or lactating women: In this case, in the same way with pregnant women, what is indicated will apply

HOME PROTECTION IN THE ACCUSATORY AND ORAL CRIMINAL JUSTICE SYSTEM. FOR THIS PRECAUTIONARY MEASURE TO PROCEED, IT IS NECESSARY FOR THE DEFENDANT TO CERTIFY A PERSONAL AND PARTICULAR CONDITION WHICH MAKES IT IMPERATIVE THAT HIS PROCESSING BE CARRIED OUT AT HIS HOME AND, FURTHERMORE, THAT ITS IMPOSITION DOES NOT IMPLY THE DANGER THAT HE MAY AWAY FROM THE ACTION OF JUSTICE OR A SOCIAL RISK. *Articles 153 and 167 of the National Code of Criminal Procedures establish the general and specific hypotheses that the court must take into consideration to impose a precautionary measure, including justified preventive detention or house protection. However, article 166 of said code indicates the exceptions to order the defendant this last precautionary measure (domiciliary protection), instead of preventive detention, and indicates that, for its origin, special characteristics must be appreciated and demonstrated that make it consider that due to the personal and particular circumstances of the accused, it is necessary that his prosecution be carried out at his home, otherwise, that is, that his deprivation of liberty is in a detention center, it could represent a preponderant risk due to these special circumstances and characteristics that it holds; the foregoing, provided that the accused does not represent a risk of removal from the action of justice or manifests a conduct that makes his social risk presumable, as provided in the third paragraph of article 166 referred to. In this sense, by way of illustration, but not limitation, the first paragraph of this precept invokes examples in which, due to the special characteristics of the accused, it would be affordable - but not inexorable, for the reason referred to in the third paragraph of that precept– the imposition of domiciliary shelter, as are people over seventy years of age; seriously or terminally ill; pregnant women or mothers during lactation. Consequently, for the admissibility of this precautionary measure, the Control Judge must verify that the defendant certifies a personal and particular condition in which the deprivation of liberty becomes suitable and proportional, but under the modality of domiciliary protection, provided that this measure does not imply a risk of abduction or a social risk.*

Article 167. Causes of origin.

The Public Prosecutor's Office may only request preventive detention or home custody from the control judge when other precautionary measures are not sufficient to guarantee the appearance of the accused at trial, the development of the investigation, the protection of the victim, witnesses or of the community as well as when the accused is being prosecuted or has been previously sentenced for the commission of an intentional crime, as long as the diverse cause is not cumulative or related in the terms of this Code.

Explanation: This paragraph is clear when pointing out that pretrial detention and housekeeping are exceptional precautionary measures, that is, they should not be promoted by the fiscal body, much less accepted by the court unless some of the following conditions are met. assumptions established in this paragraph, this logic is closely linked to the fact that the person investigated, accused or accused, is evidently innocent throughout the criminal proceedings, therefore, to a greater extent, the slightest attack on his personal freedom should be sought and avoided. criminalize early.

That is why, in the event that some of the assumptions established in the previous paragraph are not updated, some of those provided for in article 155 from its paragraph I to the XII of this code.

In the event that the accused is being prosecuted for a crime other than the one in which pretrial detention is requested, it must be analyzed whether both processes are susceptible to accumulation, in which case the existence of a prior process will not by itself give rise to the origin of preventive detention.

Explanation: This paragraph establishes a point of importance for the purposes of the application of preventive detention, since it maintains that the fact that the accused person is undergoing another criminal process is not enough for preventive detention to be imposed, but also that It is essential to study the accumulation rules established in Chapter III (from article 30 of this codification) in order to analyze whether said processes can be accumulated.

In the event that it is resolved to accumulate criminal proceedings, the fact that there is a prior criminal proceeding will not be an argument for ordering pretrial detention.

The Control Judge, in the area of his competence, will order pretrial detention informally in cases of organized crime, intentional homicide, rape, kidnapping, human trafficking, crimes committed with violent means such as weapons and explosives, as well as serious crimes that he determines. the law against the security of the Nation, the free development of personality and health.

Explanation: This paragraph broadly means that after the accusation has been formulated by the prosecutor of the public ministry for any of the crimes established in this paragraph, preventive detention is decreed without any debate.

Only in the event that an order of non-linkage to the process is issued, the precautionary measure of preventive detention may be lifted for this fact.

The general laws on health, kidnapping and human trafficking will establish the cases that warrant informal preventive detention.

Explanation: This paragraph refers us to the special laws where they must explicitly indicate in which crimes preventive detention must also be applied, so it must be assumed that the fact that this code does not indicate the crime in The

particular in which preventive detention must be applied does not mean that the crime in question is exempt from it if, on the contrary, they are indicated in the special law.

The law on organized crime will establish the cases that warrant informal preventive detention.

Explanation: Like the explanation to the previous paragraph, in the special law these cases will be indicated where preventive detention is warranted.

Offenses that warrant informal pretrial detention are considered to be those provided for in the Federal Penal Code as follows:

I. Intentional homicide provided for in articles 302 in relation to 307, 313, 315, 315 Bis, 320 and 323;

II. Genocide, provided for in article 149 Bis; III. Violation provided for in articles 265, 266 and 266 Bis;

III. Violation provided for in articles 265, 266 and 266 Bis;

IV. Treason against the homeland, provided for in articles 123, 124, 125 and 126

V. Espionage, provided for in articles 127 and 128;

VI. Terrorism, provided for in articles 139 to 139 Ter and international terrorism provided for in articles 148 Bis to 148 Quater;

VII.Sabotage, provided for in article 140, first paragraph;

VIII. Those provided for in articles 142, second paragraph and 145;

IX. Corruption of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the act or of persons who do not have the capacity to resist it, provided for in article 201; Pornography of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the fact or of persons who do not have the capacity to resist it, provided for in article 202; Sex tourism against people under eighteen years of age or people who do not have the capacity to understand the meaning of the act or people who do not have the capacity to resist it, provided for in articles 203 and 203 Bis; Lenocinio of persons under eighteen years of age or of persons who do not have the capacity to understand the meaning of the fact or of persons who do not have the capacity to resist it, provided for in article 204 and Pedophilia, provided for in article 209 Bis;

X.Trafficking of minors, provided for in article 366 Ter;

XI. Against health, provided for in articles 194, 195, 196 Bis, 196 Ter, 197, first paragraph

XII. Abuse or sexual violence against minors, provided for in articles 261 in relation to 260;

XIII. Femicide, provided for in article 325;

XIV. Robbery at home, provided for in article 381 Bis;

XV. Abusive exercise of functions, provided for in sections I and II of the first paragraph of article 220, in relation to its fourth paragraph; Fraction

XVI. Illicit enrichment provided for in article 224, in relation to its seventh paragraph, and

XVII. Theft from cargo transportation, in any of its modalities, provided for in articles 376 Ter and 381, section XVII.

The judge will not impose informal preventive detention and will replace it with another precautionary measure, only when requested by the Public Prosecutor because it is not proportional to guarantee the appearance of the accused in the process, the development of the investigation, the protection of the victim and of the witnesses or the community or, when there is a willingness of the parties to enter into a reparation agreement for immediate compliance, provided that it is about any of the crimes in which said form of alternative solution of the procedure is appropriate. The request must have the authorization of the head of the Prosecutor's Office or of the official person to whom he delegates that power.

If the informal pretrial detention had already been imposed, but the parties express their willingness to enter into a reparation agreement for immediate compliance, the Public Prosecutor's Office will request the judge to replace the precautionary measure so that the parties can finalize the agreement with the support of the specialized body. in the matter.

In cases in which the victim or offended party and the accused wish to participate in an Alternative Dispute Resolution Mechanism, and it is not feasible to modify the precautionary measure of preventive detention, due to the risk that the accused may withdraw from the procedure or hinders, the Control Judge may refer the matter to the Body specialized in the matter, to promote the repair of the damage and specify the corresponding agreement.

Explanation: In the exceptional case that the public prosecutor considers that informal pretrial detention should not be applied to the person accused of any of the crimes established in this paragraph, he may notify the control judge so that it is not imposed.

This circumstance is unlikely, since on the one hand it is an optional power of the public prosecutor to do so, and in the event that this is the case, the public prosecutor must request the head of the public prosecutor's office for that purpose.

Article 168. Danger of subtraction of the accused.

To decide whether or not the appearance of the defendant in the process is guaranteed, the control judge will take into account, especially, the following circumstances:

I. The roots that he has in the place where he must be judged determined by the domicile, habitual residence, seat of the family and the facilities to leave the place or remain hidden. Falsehood about the defendant's address constitutes a presumption of flight risk;

Explanation: The domicile of the accused within the judicial district is essential to guarantee rooting within a criminal proceeding.

Habitual residence must be understood as the geographical space where the defendant regularly develops, where he has his work, as well as where he carries out his daily activities.

The seat of the family, as his name indicates, means the place where the defendant has his family, understanding this as his parents, siblings, wife, children. etc.

The facilities to leave the place or remain hidden must be reasoned at all times using objective criteria, such as economic capacity, background and objective elements that allow the conclusion that the accused can leave the place and not submit to criminal proceedings.

Finally, in relation to the falsification of the address of the accused, it is of the utmost importance that this is not hidden or varied at any time, since in the event that the ministerial police go to verify the address and the accused does not live in the same , this may be a strong argument for the prosecutor of the public ministry for the purpose of requesting preventive detention, considering that other precautionary measures would not be sufficient to guarantee the appearance of the accused in the process, this being untraceable, and therefore it would be impossible to follow up to the process, since it could not be notified, which means that the stages of the process could not be unburdened in a natural way, which obviously paralyzes the process and its purposes would not be achieved.

II. The maximum of the penalty that in his case could be imposed according to the crime in question and the attitude that the accused voluntarily adopts before him;

Explanation: This fraction has already been interpreted by various theses where it is argued that the limits of the sentences cannot simply be used to be able to request more onerous precautionary measures.

However, if the defendant with objective data gives indications that her behavior based on the process is to seek to escape from the action of justice, it can be a viable argument for such effects.

III. The behavior of the accused after the fact committed during the procedure or in a previous one, to the extent that it indicates his willingness to submit or not to criminal prosecution;

Explanation: in the same way within this fraction it is important to establish the attitude that the accused takes based on the process, so the behavior must be understood and valued from the moment it is notified that it is being investigated for a criminal act , and therefore, from that moment on, assess the behavior that has been adopted.

IV. Failure to comply with previously imposed precautionary measures, or

Explanation: Within criminal proceedings, it is common for the accused to fail to comply with previously imposed precautionary measures, which, in the event of failing to comply with the obligations that derive from there, are objective data to prove that he has no intention of submitting to the process, and this is They will be converted into data to request more burdensome precautionary measures by modifying them.

V. The contempt of subpoenas for procedural acts and that, according to law, would have been carried out by the investigative or judicial authorities.

Explanation: When the accused does not comply with summons or procedural acts where his presence is needed, being that the public prosecutor or the court has ordered them, this circumstance alone will be sufficient data to consider a risk of removal of the accused from the process.

It is also important to analyze that the citations, and mainly those made by the ministerial body, are legal, since it is also true that on many occasions they make citations without complying with the formalities in terms of notifications, and on other occasions they cite to generate procedural acts such as acts of investigation without complying with the formalities of the code to carry them out, so the defense must be aware of these circumstances.

These judicial criteria will help to better interpret this article:

PREVENTIVE PRISON. THE MAXIMUM PENALTY AS THE SOLE REASON TO JUSTIFY ITS IMPOSITION AS A PRECAUTIONARY MEASURE, VIOLATES THE PRINCIPLE OF PRESUMPTION OF INNOCENCE IN ITS SIDE OF THE RULE OF PROCEDURAL TREATMENT, CONTAINED IN ARTICLES 20, SECTION B, SECTION I, OF THE POLITICAL CONSTITUTION OF THE UNITED STATES MEXICANS AND 7 AND 8 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS.Article 19, second paragraph, of the Political Constitution of the United Mexican States establishes that preventive detention is exceptional, since it must be requested when other precautionary measures are not sufficient to guarantee the appearance of the defendant at trial, the development of the investigation, the protection of the victim, witnesses or the community, as well as when the accused is being prosecuted or

has been previously sentenced for the commission of an intentional crime. It also specifies that the prison

preventive action proceeds informally when dealing with very specific and high-impact crimes, such as organized crime, intentional homicide, rape, kidnapping, human trafficking, crimes committed with violent means such as weapons and explosives, as well as serious crimes determined by law against of the security of the Nation, the free development of personality and health. For its part, article 20, section B, section I, of the Constitution itself, regulates the principle of presumption of innocence, which implies that every person must be treated as innocent, until their guilt is proven in a trial by means of a sentence. , preventing, to the greatest extent possible, the application of measures that imply a factual comparison between the defendant and the guilty, that is, it entails the prohibition of any type of judicial resolution that implies the anticipation of the sentence. Similarly, from Articles 7 and 8 of the American Convention on Human Rights it derives that every person has the right to liberty and personal security; and that everyone accused of a crime has the right to be presumed innocent until his guilt is legally established. In this order of ideas, the need for pretrial detention based solely on the prison sentence that provides for the criminal act indicated by law as a crime, becomes contrary to the constitutional precepts and international treaty invoked, since attentive to the exceptional nature of the precautionary measure under analysis, such as the principle of presumption of innocence in its aspect of rule of procedural treatment, its imposition with the sole argument of penalty is an anticipated position without any justification, since it is taken for granted that the accused will withdraw from the procedure based on the possible imposition of the prison sentence that the criminal type sanctions. Especially if it is taken into account that section II of article 168 of the National Code of Criminal Procedures states that in order to decide on the danger of abduction of the accused, the maximum penalty that, if applicable, could be imposed according to the agreement with the crime in question and the attitude that the defendant voluntarily adopts, from which it is noted that the factor related to the maximum penalty should not be weighed in isolation, but in conjunction with the circumstances indicated.

PRECAUTIONARY MEASURES IN THE ACCUSATORY CRIMINAL SYSTEM. THE ACCUSED'S ARRAYO SHOULD NOT NECESSARILY BE LOCATED IN THE PLACE WHERE HE SHOULD BE JUDGED, IN ORDER TO HAVE HIS APPEARANCE IN THE PROCESS GUARANTEED. The precautionary measures in the accusatory criminal process are intended, among others, to ensure the presence of the accused in the procedure (article 153 of the National Code of Criminal Procedures), and to decide whether or not this circumstance is guaranteed, the Judge must consider, among other factors, the roots that the defendant has in the place where he must be tried (article 168, section I, of the code itself). This last requirement should not be demanded under a literal reading of the procedural norm, on the contrary, the expression "the roots that he has in the place where he must be judged", must be interpreted systematically with the first paragraph of the aforementioned article 168, which states that the control Judge "will take into account, especially", which implies that this is not a sine qua non requirement, but only an aspect to consider

for decision-making and what is relevant will be to notice whether or not the accused has roots domiciliary determined by his habitual residence, family seat and the ease of abandoning him or remaining hidden, regardless of whether or not said rooting coincides with the place where he must be tried, since the latter could be a merely contingent factor.

Article 169. Danger of hindering the development of the investigation.

To decide about the danger of hindering the development of the investigation, the control judge will take into account the circumstances of the accused act and the elements provided by the Public Ministry to estimate as probable that, if he is released, the accused:

Destroy, modify, hide or falsify evidence;

Influence co-defendants, witnesses or experts to report falsely or behave reticently or induce others to engage in such behaviour, or

Intimidate, threaten or hinder the work of public servants who participate in the investigation.

Article 170. Risk for the victim or offended party, witnesses or for the community.

The protection that must be provided to the victim or offended party, to the witnesses or to the community, will be established based on the assessment made by the control judge regarding the circumstances of the event and the particular conditions in which said subjects are found, According to those that may derive from the existence of a well-founded risk that an act that affects their personal integrity or puts their lives at risk is committed against said persons.

Article 171. Evidence for the imposition, revision, substitution, modification or cessation of preventive detention.

The parties may invoke data or offer means of proof in order to request the imposition, review, substitution, modification or cessation of preventive detention.

In all cases, the provisions of this Code will be followed in relation to the admission and relief of evidence.

The means of conviction close will be effective only for the resolution of the issues that have been raised.

Article 172. Presentation of the guarantee.

When deciding on the precautionary measure consisting of an economic guarantee, the Control Judge will previously take into consideration the suitability of the measure requested by the Public Ministry. To decide on said amount, the control judge must take into account the danger of subtraction of the defendant from trial, the danger of hindering the development of the investigation and the risk for the victim or offended party, for the

witnesses or for the community. Additionally, he must consider the characteristics of the accused, his economic capacity, the possibility of compliance with the procedural obligations under his charge.

The control Judge will make the estimate so that it constitutes an effective reason for the accused to refrain from failing to comply with his obligations and must set a reasonable term to display the guarantee.

These judicial criteria will help to better interpret this article:

PRECAUTIONARY MEASURE OF ECONOMIC GUARANTEE. WHEN DECIDING ON THE IMPOSITION OF ITS AMOUNT, THE CONTROL JUDGE SHOULD CONSIDER THAT THE IMPUTED COULD NOT HAVE MAINTAINED THE ECONOMIC CAPACITY THAT HE HAD PRIOR TO BEING ARRESTED, BECAUSE HE WAS INTERNED IN A DEFENSE CENTER. Pursuant to article 172 of the National Code of Procedures When deciding on the precautionary measure consisting of an economic guarantee, the Control Judge will previously take into account, among other things, the economic capacity of the accused; for which, you cannot lose sight of the fact that, when you are an inmate in a detention center, although you have not seen the need to incur any expense, because the penitentiary system covers all the basic requirements of inmates, such as: clothing, food, education, sports and recreational activities; The truth is that it cannot be ensured that his economy was maintained, especially since it is not unknown that, on occasions, confinement generates internal expenses, such as those related to the assignment of cleaning tasks in common areas, as well as the existence of charges for concept of protection, dormitory assignment, roll call, dormitory maintenance, not cleaning and using the telephone, to name a few; this, added to the expenses related to the defense of the defendant (private defense). Which, among other aspects, has even been the reason for a recommendation by the National Human Rights Commission, specifically, in General Recommendation No. 30/2017 on Conditions of Self-government and/or Co-government in Penitentiary Centers of the Mexican Republic, of May 8, 2017, in which it was specified that in detention centers there are effects on the conditions of dignified stay, due to a limitation or charge in the presentation of services, food, drinking water, stay for sleep, health, work, training, sports facilities, family and intimate visits. Likewise, it was specified that it is unacceptable that there are a good number of prisons in the country with conditions of self-government/co-government, presenting the governance of the center weakened, a situation that has been reflected, in many cases, in recent years (2011 to 2015). , among which are, among others, the Eastern, North and South Male Preventive Prisons, the "Tepepan" Women's Social Reintegration Center, the Santa Martha Acatitla Penitentiary and the Santa Martha Acatitla Women's Social Reintegration Center, all in the City from Mexico. Hence, it is affirmed that the defendant's economy could not have been maintained during the time of confinement, especially if he is an inmate in one of the prisons with self-government/co-government conditions mentioned.

Article 173. Type of guarantee.

The economic guarantee may be constituted in the following ways:

I. Deposit in cash;

II. Authorized institution bond;

III.Mortgage;

IV.Pledge;

V. Trust, or

VI. Any other that, at the discretion of the Control Judge, sufficiently fulfills this purpose.

The Control Judge may authorize the replacement of the guarantee imposed on the accused by another equivalent one after hearing the Public Ministry, the victim or offended party, if present.

The economic guarantees will be governed by the general rules provided for in the Federal Civil Code or the Federal Entities, as appropriate and other applicable legislation.

The cash deposit will be equivalent to the amount indicated as economic guarantee and will be made in the credit institution authorized for it; however, when for reasons of time or because it is a non-business day the deposit cannot be made, the Control Judge will receive the amount in cash, record it and deposit it on the first business day to the authorized credit institution.

Article 174. Non-compliance of the accused with the precautionary measures.

When the supervisor of the precautionary measure detects a breach of a precautionary measure other than the economic guarantee or preventive detention, he must inform the parties immediately so that, if applicable, they can request the review of the precautionary measure.

The Public Ministry that receives the report from the supervisory authority on precautionary measures and the conditional suspension of the process, must request a hearing to review the precautionary measure imposed as soon as possible and, if applicable, request the appearance of the accused or an arrest warrant.

In the event that the defendant notified by any means does not appear unjustifiably at the hearing to which he was summoned, the Public Ministry must request the arrest warrant or appearance.

The justification for the absence by the accused must be submitted no later than the time of the hearing.

In the event that the defendant has been imposed as a precautionary measure an economic guarantee and, exhibited, is summoned to appear before the judge and fails to comply with the appointment, the guarantor will be required to present the accused within a period not exceeding eight days , warned, the guarantor and the accused, that if he does not do so or does not justify the appearance, the guarantee will be made effective in favor of the Integral Aid, Assistance and Reparation Fund or its equivalent in the federal entities, provided for in the General Law of Victims.

If the defendant is caught violating a precautionary measure of those established in sections V, VII, VIII, IX, XII and XIII of Article 155 of this Code, the supervisor of the precautionary measure must immediately notify the Judge by any means. of control who with the same immediacy will order his arrest based on subparagraph d), section II of article 104 of this Code, so that within the duration of this he is brought before him in audience with the parties, in order that the precautionary measure is reviewed; as long as he has been warned that if he fails to comply with the precautionary measure, said measure of urgency would be imposed.

Article 175. Cancellation of the guarantee.

The guarantee will be canceled and the goods affected by it will be returned, when:

I. The decision that decrees it is revoked;

II. The dismissal or acquittal is issued, or

III. The defendant submits to the execution of the sentence or the guarantee should not be executed.

CHAPTER V: ON THE SUPERVISION OF PRECAUTIONARY MEASURES

SECTION I: Of the Authority of supervision of precautionary measures and of the conditional suspension of the process

Article 176. Nature and purpose.

The Authority for the supervision of precautionary measures and the conditional suspension of the process, will have the purpose of carrying out the risk assessment of the accused, as well as carrying out the monitoring of the precautionary measures and the conditional suspension of the process, in case they do not Whether it is a public security institution, it may be assisted by the corresponding police instance for the development of its functions.

This authority must provide the parties with information on the risk assessment represented by the accused and the follow-up of the precautionary measures and the conditional suspension of the process that they request.

Explanation: Regularly it is the secretariat of public security of the States that has these departments for the purpose of supervising precautionary measures and the suspension of the trial process.

When an incident occurs in relation to the conditions for compliance with any of these measures, this authority must send a report of what happened to the parties, and based on this, a hearing may be scheduled to discuss whether the agreed conditions should be modified. , or where appropriate, toughen the precautionary measure previously imposed.

Article 177. Obligations of the supervisory authority of precautionary measures and the conditional suspension of the process.

The supervisory authority for precautionary measures and the conditional suspension of the process will have the following obligations:

I. Supervise and follow up on the precautionary measures imposed, other than preventive detention, and the conditions in charge of the accused in case of conditional suspension of the process, as well as make suggestions on any change that warrants any modification of the measures or obligations imposed

Explanation: when conditions are established in the conditional suspension of the process, such as participating in programs to prevent or treat addictions or any of those indicated in article 195 of the national code of criminal procedures, the obligated party, that is, the accused must periodically attend to the facilities to present the documentation that proves that it is complying with its obligations, otherwise it will give a hearing to the judge and the public prosecutor where a

hearing to review the conditional suspension of the process will surely be scheduled.

In terms of precautionary measures, the same thing happens, in case of having information that indicates that it is not being complied with, the aforementioned authorities will be notified.

II. Periodically interview the victim or witness of the crime, in order to monitor compliance with the precautionary measure imposed or the conditions of the conditional suspension of the process and channel them, where appropriate, to the corresponding authority;

III. Carry out interviews as well as unannounced visits at the home or at the place where the accused is located;

IV. Verify the location of the accused at his home or in the place where he is, when the modality of the precautionary measure or the conditional suspension of the process imposed by the judicial authority so requires;

V. Require that the accused provide samples, without prior notice, to detect the possible use of alcohol or prohibited drugs, or the result of their examination, if applicable, when the modality of the conditional suspension of the process imposed by the judicial authority so requires;

VI. Supervise that the persons and public and private institutions to which the judicial authority entrusts the care of the accused, comply with the obligations contracted;

VII. Request the accused the information that is necessary to verify compliance with the measures and obligations imposed;

VIII. Review and suggest changes to the conditions of the measures imposed on the accused, ex officio or at the request of a party, when the original circumstances that served as the basis for imposing the measure change;

IX. Inform the parties of those violations of the measures and obligations imposed that are duly verified, and may imply the modification or revocation of the measure or suspension and suggest the modifications it deems appropriate;

X. Keep updated a database on the precautionary measures and obligations imposed, their follow-up and conclusion;

XI. Request and provide information to the offices with similar functions of the Federation or of Federative Entities within their respective areas of competence;

XII. Execute requests for support to obtain information required by offices with similar functions of the Federation or of the Federative Entities in their respective areas of competence;

XIII. Channel the accused to social assistance services, public or private, in matters of health, employment, education, housing and legal support, when the modality of the precautionary measure or the conditional suspension of the process imposed by the judicial authority so require, and

XIV. The others established by the applicable legislation.

Article 178. Risk of non-compliance with a precautionary measure other than preventive detention.

In the event that the authority supervising precautionary measures and the conditional suspension of the process, notices that there is an imminent objective risk of flight or affectation to the personal integrity of the parties involved, it must inform the parties immediately to effect that, where appropriate, they can request the review of the precautionary measure from the control judge.

Article 179. Suspension of the precautionary measure.

When the conditional suspension of the process is determined, the judicial authority must suspend the precautionary measures imposed, which may continue in the same terms or be modified, if the process is resumed, in accordance with the requests of the parties and the judicial determination.

Article 180. Continuation of the precautionary measure in the event of an appealed conviction.

When the sentenced person appeals the conviction, he will continue to monitor the precautionary measures imposed until the sentence is established, without prejudice to the fact that they may be subject to review in accordance with the rules of this Code.

Article 181. Monitoring of precautionary measures in case of suspension of the process.

When the process is suspended by virtue of the fact that the judicial authority has determined the removal of the action of justice, the precautionary measures will continue in force, except those that are impossible to comply with.

In the event that the process is suspended due to the lack of a procedural requirement, the precautionary measures will continue in force for the term determined by the judicial authority, which may not exceed forty-eight hours.

If the defendant is declared inimputable, a hearing will be called to review the precautionary measure, providing, where appropriate, the application of reasonable adjustments requested by the parties.

Article 182. Registration of supervision activities.

A record will be kept, by any reliable means, of the necessary activities that allow the supervisory authority of precautionary measures and of the suspension

conditional of the process to be certain of compliance or non-compliance with the obligations imposed.

SECOND BOOK: OF THE PROCEDURE

TITLE I: ALTERNATE SOLUTIONS AND FORMS OF EARLY TERMINATION

CHAPTER I: COMMON PROVISIONS

Article 183. General principle.

In matters subject to abbreviated procedure, the provisions established in this Title shall apply.

In all matters not provided for in this Title, and as long as they do not oppose it, the rules of the ordinary process will be applied.

For alternate exits and forms of early termination, the competent authority will have a record to monitor compliance with the reparation agreements, the processes of conditional suspension of the process, and the abbreviated procedure, said record must be consulted by the Public Ministry and the judicial authority before requesting and granting, respectively, some form of alternative solution to the procedure or early termination of the process.

Explanation: The alternative exits that it establishes are the reparation agreement and the conditional suspension of the process. Due to the first one, this does not require judicial control, so it can be carried out at the ministerial headquarters. Due to the second of them, it is whether it requires judicial control, since it establishes a minimum of 6 months and it will be the authority in charge of reviewing the conditional suspension of the process who will verify that the obligations that have been imposed on the accused are fulfilled, which fulfilled and in case of reparation of the damage have been satisfied will lead to the extinction of the criminal action with the effects of an acquittal.

Article 184. Alternative solutions.

They are forms of alternative solution of the procedure:

I. The reparation agreement, and

II. The conditional suspension of the process.

Explanation: We must not confuse an alternate exit with an early form of termination of the process.

The big difference is that the first ones result in an acquittal in favor of the accused if it is fulfilled, and in the second case a regularly condemnatory sentence against the accused.

Article 185. Forms of early termination of the process.

The abbreviated procedure will be considered a form of early termination of the process.

CHAPTER II: REPAIR AGREEMENTS

Article 186. Definition.

Reparation agreements are those entered into between the victim or offended party and the accused that, once approved by the Public Prosecutor's Office or the control judge and fulfilled in their terms, have the effect of extinction of the criminal action.

Explanation: The reparation agreements are one of the two alternative exits of the criminal process.

The reparation agreements have the particularity of having the approval of both parties so that they can be carried out, that is, of the victim or offended party, and on the other hand of the accused or defendant, if one of these two circumstances does not occur, they cannot be carried out. carry out reparation agreements.

These judicial criteria will help to better interpret this article:

REPAIR AGREEMENT. FAILURE TO COMPLY WITH ONE OF THE AGREED CONDITIONS WITHOUT JUSTIFIED CAUSE, GIVES PLACE TO REVOKE IT AND ORDER THE RESUMPTION OF THE CRIMINAL CASE.Considering the legal nature of this alternative means of resolving the dispute, if in a criminal proceeding the parties agree to accept the terms to carry out a reparation agreement, consisting of the payment of an amount of money within a determined period, with the specific condition that the defendant's non-compliance with just one of the payments is enough to revoke it and resume the process, and he stops paying the agreed amount without just cause, it is not valid to justify it in response to the statements in the sense that he made payments according to their economic capacity, because if they are finally obliged to comply with the terms of the agreement, they are equally obliged to assume the consequences of their non-observance; hence, it is appropriate to revoke the reparation agreement and order the resumption of the criminal case at the stage in which it was suspended.

Article 187. Control over reparation agreements.

Reparation agreements will proceed only in the following cases:

I. Crimes that are prosecuted by complaint, by equivalent requirement of the offended party or that admit the forgiveness of the victim or the offended party;

Explanation: The reparation agreements proceed in all crimes where the crime is a complaint, that is, where the will of the victim or the offended party is needed to initiate the investigation.

II. Culpable crimes, or

III. Property crimes committed without violence against people.

Reparation agreements will not proceed in cases in which the accused has previously entered into other agreements for acts that correspond to the same intentional crimes, nor will they proceed in the case of crimes of family violence or their equivalents in the federative Entities. Nor will reparation agreements be appropriate for the hypotheses provided for in sections I, II and III of the seventh paragraph of article 167 of this Code.

Nor will they be appropriate in the event that the accused has previously breached a reparation agreement, unless he has been acquitted.

Article 188. Origin.

The reparation agreements will proceed from the presentation of the complaint or complaint until before the order to open the trial is decreed. In the event that the order of connection to the process has been issued and even before the order to open the trial has been issued, the control judge, at the request of the parties, may suspend the criminal process for up to thirty days to that the parties can finalize the agreement with the support of the competent authority specialized in the matter.

In the event that the concertation is interrupted, either party may request the continuation of the process.

Article 189. Opportunity.

From its first intervention, the Public Ministry or, where appropriate, the Control Judge, may invite the interested parties to sign a reparation agreement in the cases in which it proceeds, in accordance with the provisions of this Code, and must explain to the parties the effects of the agreement.

The parties may agree to reparation agreements for immediate or deferred compliance. In case of indicating that compliance must be deferred and not specifying a specific term, it will be understood that the term will be for one year. The deadline for compliance with the obligations will suspend the processing of the process and the prescription of criminal action.

If the accused breaches the agreed obligations without just cause, the investigation or process, as appropriate, will continue as if no agreement had been entered into.

The information generated as a product of the reparation agreements may not be used to the detriment of the parties in the criminal process.

The judge will order the extinction of the action once full compliance with the obligations agreed upon in a reparation agreement has been approved, acting as an enforceable judgment.

Article 190. Procedure.

The reparation agreements must be approved by the control Judge from the complementary investigation stage and by the Public Ministry in the initial investigation

stage. In the latter case, the parties will have the right to go before the control Judge, within five days after the reparation agreement has been approved, when they consider that the alternative dispute resolution mechanism was not developed in accordance with the provisions provided. in the law of matter. If the control Judge determines the claims of the parties as valid, he may declare the reparation agreement as not concluded and, where appropriate, approve the modification agreed between the parties.

Prior to the approval of the reparation agreement, the Control Judge or the Public Ministry will verify that the obligations contracted are not clearly disproportionate and that the parties involved were in equal conditions to negotiate and that they have not acted under conditions of intimidation, threat or coercion.

CHAPTER III: CONDITIONAL SUSPENSION OF THE PROCESS

Article 191. Definition.

By conditional suspension of the process, the approach formulated by the Public Ministry or by the accused must be understood, which will contain a detailed plan on the payment of the reparation of the damage and the submission of the accused to one or several of the conditions referred to in this Chapter, that guarantee effective protection of the rights of the victim or offended party and that, if fulfilled, may lead to the extinction of the criminal action.

Article 192. Origin.

The conditional suspension of the process, at the request of the accused or the Public Prosecutor's Office with the agreement of the former, will proceed in cases where the following requirements are met:

I. That the order linking the defendant to the process has been issued for a crime whose arithmetic mean of the prison sentence does not exceed five years;

II. That there is no well-founded opposition from the victim and offended, and

III. That two years have elapsed since compliance or five years since non-compliance, of a previous conditional suspension, if applicable.

The provisions of section III of this article shall not apply when the defendant has been acquitted in said proceeding.

The conditional suspension will be inadmissible for the hypotheses provided for in sections I, II and III of the seventh paragraph of article 167 of this Code.

Article 193. Opportunity.

Once the order of linkage to the process has been issued, the conditional suspension of the process may be requested at any time until before the opening of the trial is agreed, and it will not prevent the exercise of civil action before the respective courts.

Article 194. Repair plan.

At the hearing where the request for conditional suspension of the process is resolved, the accused must present a plan to repair the damage caused by the crime and deadlines to comply with it.

Article 195. Conditions to be fulfilled during the period of conditional suspension of the process.

The control judge will set the period of conditional suspension of the process, which may not be less than six months nor more than three years, and will determine to impose on

the accused one or more of the conditions that must be met, which in an enunciative but not limitative manner are indicated:

I. Reside in a certain place;

II. Frequent or stop frequenting certain places or people;

III. Refrain from consuming drugs or narcotics or abusing alcoholic beverages;

IV. Participate in special programs for the prevention and treatment of addictions;

V. Learn a profession or trade or follow training courses in the place or institution determined by the Control Judge;

VI. Provide social service in favor of the State or public charitable institutions;

VII. Submit to medical or psychological treatment, preferably in public institutions;

VIII. Have a job or employment, or acquire, within the period determined by the Control Judge, a trade, art, industry or profession, if you do not have your own means of subsistence;

IX. Submit to the surveillance determined by the Control Judge;

X. Not own or carry weapons;

XI.Do not drive vehicles;

XII. Refrain from traveling abroad;

XIII. Comply with the duties of a food debtor, or

XIV. Any other condition that, in the opinion of the Control Judge, achieves an effective protection of the rights of the victim.

To set the conditions, the Control Judge may order that the accused be subjected to a prior evaluation. The Public Prosecutor's Office, the victim or offended party, may propose to the control judge conditions to which they consider the accused must submit.

The Control Judge will ask the defendant if he agrees to comply with the imposed conditions and, where appropriate, will warn him about the consequences of non-observance of him.

Article 196. Procedure.

The victim or offended will be summoned to the hearing on the date indicated by the Control Judge. Their failure to appear will not prevent the Judge from ruling on the origin and terms of the request.

In his resolution, the Control Judge will establish the conditions under which the process is suspended or the request is rejected and will approve the proposed reparation plan, which may be modified by the Control Judge at the hearing. The mere lack of resources of the accused may not be used as sufficient reason to reject the conditional suspension of the process.

The information generated as a result of the conditional suspension of the process may not be used if the criminal process continues.

Article 197. Conservation of investigation records and evidence.

In the processes suspended in accordance with the provisions established in this Chapter, the Public Ministry will take the necessary measures to avoid the loss, destruction or ineffectiveness of the known records and evidence and those requested by the subjects involved in the process.

Article 198. Revocation of the conditional suspension of the process.

If the defendant unjustifiably ceases to comply with the conditions imposed, does not comply with the reparation plan, or is subsequently convicted by an enforceable sentence for an intentional or culpable crime, provided that the suspended process refers to a crime of this nature, the control Judge, upon request of the agent of the Public Prosecutor's Office or of the victim or offended party, it will summon the parties to a hearing in which the origin of the revocation of the conditional suspension of the process will be discussed, and the appropriate resolution must be resolved immediately.

The Control Judge may also extend the term of the conditional suspension of the process for up to two more years. This extension of the term may be imposed only once.

If the victim or offended party had received payments during the conditional suspension of the process and this was subsequently revoked, the total amount of said payments must be used to pay compensation for damages that corresponds to the victim in his case. or offended.

The obligation to comply with the conditions derived from the conditional suspension of the process, as well as the term granted for this purpose, will be interrupted while the accused is deprived of his liberty by another process. Once the defendant obtains his freedom, they will resume.

If the accused is subject to another process and enjoys freedom, the obligation to comply with the conditions established for the conditional suspension of the process, as well as the term granted for this purpose, will continue in force; however, the extinction of the criminal action may not be decreed until the resolution that exempts him from responsibility within the other process is final.

Article 199. Provisional cessation of the effects of the conditional suspension of the process.

The conditional suspension of the process will interrupt the terms for the prescription of the criminal action of the crime in question.

When the conditions established by the Control Judge for the conditional suspension of the process, as well as the reparation plan have been fulfilled by the defendant within the period established for this purpose without said conditional suspension of the process having been revoked, the action will be extinguished. criminal, for which the Judge of control must decree ex officio or at the request of a party the dismissal.

Article 200. Verification of the existence of a prior agreement.

Prior to the start of the hearing for the conditional suspension of the process, the Public Prosecutor's Office must consult the respective records if the defendant was previously part of any alternative solution mechanism or signed reparation agreements, and must incorporate the result of the investigation into the records. the consultation and inform in the audience of the same.

CHAPTER IV: ABBREVIATED PROCEDURE

Article 201. Requirements of origin and verification of the Judge.

To authorize the abbreviated procedure, the Control Judge will verify the following requirements at the hearing:

I.-That the Public Ministry request the procedure, for which the accusation must be formulated and the evidence that supports it must be presented. The accusation must contain the enunciation of the facts that are attributed to the defendant, his legal classification and degree of intervention, as well as the penalties and the amount of reparation for the damage;

II. That the victim or offended does not present opposition. Only the opposition that is founded will be binding for the judge, and

III. That the defendant:

a) Acknowledge that you are duly informed of your right to an oral trial and of the scope of the abbreviated procedure;

b) Expressly waive the oral trial;

c) Consent to the application of the abbreviated procedure;

d) Admit your responsibility for the crime with which you are charged;

e) He agrees to be sentenced based on the means of conviction that the Public Ministry exposes when formulating the accusation.

Explanation: Requirements for the abbreviated procedure to proceed.

I.- It can only be requested by the public ministry, so that the origin of this early termination of the process is an exclusive power of the ministerial authority, that is, it cannot be requested by the defense or the legal adviser.

In addition to what has been stated above, the prosecutor of the public ministry must have presented an accusation in accordance with the requirements indicated in article 335 of the national code of criminal procedures.

II.- The victim or offended must not present a well-founded opposition for this abbreviated procedure to be carried out.

The motivation of the victim or offended party for the purpose of opposing the processing of said measure must be motivated, as could be the case in which, when carrying out said measure, their rights to compensation for comprehensive damage could be violated as indicated. in the constitution, the current national code of criminal procedures and the general law of victims.

In case of not having a reason to avoid it, the processing of it must be declared appropriate.

III.- In addition to the above, the following must take place in the audience.

That the defendant:

a) Acknowledge that you are duly informed of your right to an oral trial and of the scope of the abbreviated procedure:

The control judge must make sure that the defendant understands what it means to carry out an oral trial and the benefits or damages that could be given by waiving this right to carry out the trial, and on the other hand, what legal effects will be generated with the acceptance of the abbreviated procedure, such as the conviction that will be generated in the process.

b) Expressly waive the oral trial:

In practice, the control judge at the same hearing asks the defendant if he expressly waives his right to attend an oral trial where he could even prove his innocence.

Regularly the defendants agree to accept this figure since they can be offered a reduction of one third of the minimum sentence for the crime for which they are being accused, which can even lead them to be able to access substitute figures for the prison sentence. that can help the sentenced person to recover his freedom.

c) Consent to the application of the abbreviated procedure;

In the same way they would have to accept being judged by this figure.

d) Admit your responsibility for the crime with which you are charged;

Another requirement is also to accept responsibility for the crime for which you are being charged.

e) He agrees to be sentenced based on the means of conviction that the Public Ministry exposes when formulating the accusation.

Finally, the defendant must accept that he be accused with the evidence that the public prosecutor has in his investigation folder, which he must verbalize by means of reading with the control judge and he will assess for the purposes of issuing a sentence, the same as regularly it will be damning.

These judicial criteria will help to better interpret this article:

ABBREVIATED PROCEDURE. ITS ADMISSION DEPENDS ON MEETING THE REQUIREMENTS ESTABLISHED IN ARTICLE 201 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, SO IF THE CONTROL JUDGE TAKEN INTO

CONSIDERATION THAT THE PUBLIC PROSECUTOR FAILED TO COLLECT THE CRIMINAL RECORD OF THE ACCUSED, AS ONE OF THE ASSUMPTIONS FOR REJECTING ITS OPENING VIOLATES THE FUNDAMENTAL RIGHT TO DUE PROCESS. The aforementioned precept establishes the requirements that must be met for the origin of the anticipated mechanism of the conclusion of the aforementioned process, and its non-admission depends on very limited cases provided for in article 203 of the National Code of Criminal Procedures (inconsistency or inconsistency), within which is not found the omission of the Public Ministry to collect the criminal records of the accused; Hence, if the Control Judge indicated this aspect as one of the assumptions to reject the abbreviated procedure and suspend the relative hearing, it violates the fundamental right to due process to the detriment of the accused, provided for in article 14 of the Political Constitution of the United Mexican States, because the requirements for its origin were satisfied; especially that with this procedure, the Judge violates the principles of continuity, concentration and equality of the parties before the law, by giving the Social Representation an advantage over the accused, which substantially influenced the pronouncement of the sentence.

Article 202. Opportunity.

The Public Prosecutor's Office may request the opening of the abbreviated procedure after the order linking the process is issued and even before the issuance of the order to open the oral trial. All parties must be summoned to the hearing.

The non-appearance of the duly summoned victim or offended party will not prevent the Control Judge from ruling on the matter. When the defendant has not been previously convicted of an intentional crime and the crime for which the abbreviated procedure is carried out is sanctioned with a prison sentence whose arithmetic average does not exceed five years, including its mitigating or aggravating qualifications, the Public Ministry may request a reduction of up to half of the minimum sentence in cases of intentional crimes and up to two thirds of the minimum sentence in the case of culpable crimes, of the prison sentence that corresponds to the crime for which he is accused.

In any case, the Public Prosecutor's Office may request a reduction of up to one third of the minimum in cases of intentional crimes and up to one half of the minimum in the case of culpable crimes, of the prison sentence. If at the time of this request, there is already a written accusation, the Public Prosecutor may orally modify it at the hearing where it is resolved on the abbreviated procedure and, if applicable, request the reduction of the sentences, for the purpose of allowing the processing of the case. in accordance with the rules set forth in this Chapter. The Public Prosecutor's Office, when requesting the penalty under the terms provided in this article, must observe the Agreement issued by the Prosecutor for that purpose**.**

Article 203. Admissibility.

In the same hearing, the Control Judge will admit the request of the Public Prosecutor's Office when he verifies that the means of conviction that corroborate the imputation, in

terms of section VII, section A of article 20 of the Constitution, concur. The test data that emerges from the records contained in the investigation folder will be means of conviction.

If the abbreviated procedure is not accepted by the control judge, the oral accusation made by the Public Prosecutor will be deemed not to have been formulated, as well as the modifications that, if applicable, it would have made to its respective document and will continue in accordance with the provisions established for the ordinary procedure. Likewise, the Control Judge will order that all the information related to the approach, discussion and resolution of the request for abbreviated procedure be eliminated from the registry.

If the application is not accepted due to inconsistencies or inconsistencies in the proposals of the Public Prosecutor's Office, the latter may submit the application again once the noted defects have been corrected.

Article 204. Opposition of the victim or offended.

The opposition of the victim or offended party will only be appropriate when it is proven before the Control Judge that the repair of the damage is not duly guaranteed.

Article 205. Processing of the procedure.

Once the Public Ministry has made the request for the abbreviated procedure and exposed the accusation with the respective evidence, the control judge will resolve the opposition that the victim or offended may have expressed, will observe compliance with the requirements established in article 201 , section III, corresponding to the accused and will verify that the elements of conviction that support the accusation are duly integrated into the investigation folder, prior to deciding on the authorization of the abbreviated procedure.

Once the Control Judge has authorized the processing of the abbreviated procedure, he will listen to the Public Prosecutor, the victim or offended party or his legal adviser, if present, and then the defense; In any case, the final exposure will always correspond to the accused.

Article 206. Judgment.

Once the debate has concluded, the control judge will issue his ruling at the same hearing, for which he must give a public reading and explanation of the sentence, within a period of forty-eight hours, concisely explaining the grounds and reasons he took into consideration. .

A different or more far-reaching penalty may not be imposed than the one requested by the Public Prosecutor's Office and accepted by the defendant.

The judge must set the amount of reparation for the damage, for which he must state the reasons for accepting or rejecting the objections that the victim or offended party may have formulated.

Article 207. General rules.

The existence of several co-defendants does not prevent the application of these rules individually.

CHAPTER V: SUPERVISION OF THE CONDITIONS IMPOSED IN THE CONDITIONAL SUSPENSION OF THE PROCESS

Article 208. Rules for the obligations of the conditional suspension of the process.

For the follow-up of the obligations set forth in article 195, sections III, IV, V, VI, VIII and XIII, the public and private institutions designated by the judicial authority will inform the supervisory authority of precautionary measures and of the conditional suspension of the compliance process.

Explanation: It is the obligation of any institution to which the mandate is directed to carry out any follow-up of conditions imposed by the judge to inform the supervisory authority of precautionary measures about the follow-up of the same.

For example, if the defendant was imposed the condition of going to alcoholics anonymous and he stops going, it is that the former (alcoholics anonymous) must report this situation to the supervisory authority so that the latter in turn informs the judge of control and the public ministry and the conditions imposed are reviewed.

Article 209. Notification of the obligations of the conditional suspension of the process.

Once the hearing has concluded and the conditional suspension of the process and the obligations that the accused must comply with have been approved, the supervisory authority of precautionary measures and the conditional suspension of the process will be notified, in order for it to start the supervision process. For this purpose, you must be provided with information on the conditions imposed.

Explanation: The conditional suspension of the process has the characteristic, among others, of complying with imposed conditions, which will have to be some of those indicated in article 195 of the national code of criminal procedures. In this sense, the immediate notification to the authority will take place immediately after the hearing has concluded.

Article 210. Notification of breach.

When it considers that an unjustified non-compliance has been updated, the supervisory authority for precautionary measures and the conditional suspension of the process will send the non-compliance report to the parties so that they may request a hearing to revoke the suspension before the competent judge.

If the judge determines the revocation of the conditional suspension of the process, the supervision of the supervisory authority of precautionary measures and the conditional suspension of the process will conclude.

The Public Ministry that receives the report from the supervisory authority of precautionary measures and the conditional suspension of the process, must request a hearing to request the review of the conditions or obligations imposed as soon as possible.

Explanation: When there is a breach of the imposed conditions, the authority must immediately notify the judge and the public prosecutor for the purpose of reviewing compliance with it.

At the hearing, the point of view of the defendant or defendant will be analyzed and they will be given the opportunity to justify either by their statement or by any document in their possession the reason for the breach of the condition imposed.

After that, the public prosecutor, and the legal adviser or the victim will indicate if they want the conditional suspension of the process to be canceled and the process to be reopened, on the other hand, the defender will discuss his point of view to indicate what he deems appropriate, and Finally, the control judge will decide on the exposed approaches.

TITLE II: ORDINARY PROCEDURE
SINGLE CHAPTER: STEPS OF THE PROCEDURE

Article 211. Stages of criminal proceedings.

The criminal procedure includes the following stages:

I. Research, which includes the following phases:

a) Initial investigation, which begins with the presentation of the complaint, complaint or other equivalent requirement and concludes when the accused is made available to the control judge so that an imputation can be formulated, and

b) Complementary investigation, which includes from the formulation of the accusation and is exhausted once the investigation has been closed;

II. The intermediate or preparation of the trial, which includes from the formulation of the accusation to the order for the opening of the trial, and

III. The trial, which ranges from the receipt of the order to open the trial to the sentence issued by the Court of prosecution.

The investigation is not interrupted or suspended during the time that the initial hearing is carried out until its conclusion or during the eve of the execution of an arrest warrant.

The exercise of the action begins with the request for a summons to the initial hearing, made available to the detainee before the judicial authority or when the arrest warrant or appearance is requested, with which the Public Ministry will not lose direction of the investigation. The process will begin with the initial hearing, and will end with the final sentence.

TITLE III: INVESTIGATION STAGE

CHAPTER I: COMMON PROVISIONS TO THE INVESTIGATION

Article 212. Duty of criminal investigation.

When the Public Ministry becomes aware of the existence of a fact that the law indicates as a crime, it will direct the criminal investigation, without being able to suspend, interrupt or stop its course, except in the cases authorized in it.

The investigation must be carried out immediately, efficiently, exhaustively, professionally and impartially, free of stereotypes and discrimination, aimed at exploring all possible lines of investigation that allow gathering data to clarify the fact that the law indicates as a crime, as well as the identification of the person who committed it or participated in its commission.

Explanation: Article 21 of the Constitution grants the public ministry the monopoly of the investigation of crimes, which must be carried out immediately, so that the ministerial body, from the moment it becomes aware of the crime, must quickly start the investigation.

It is extremely important that the investigation be carried out objectively, by stating that it must be free of stereotypes, it means that it should not be limited to ruling out lines of investigation or rejecting certain stories made by the complainant for ideas alone.

Article 213. Object of the investigation.

The purpose of the investigation is for the Public Ministry to gather evidence to clarify the facts and, where appropriate, the evidence to support the exercise of criminal action, the accusation against the accused and the repair of the damage.

Explanation: The power granted by the constitution to the public ministry indicated in article 21 of the constitution grants it the monopoly of criminal action, so from this point of view the latter must act objectively respecting the formalities of the process in order to gather all amount of evidence and thereby determine if it has sufficient elements for the purpose of bringing criminal action against the person under investigation.

Article 214. Principles governing the investigation authorities.

The authorities in charge of developing the investigation of crimes will be governed by the principles of legality, objectivity, efficiency, professionalism, honesty, loyalty and respect for human rights recognized in the Constitution and in the Treaties.

Explanation: Article 128 and 129 of this code oblige the public prosecutor to act with loyalty, objectivity and due diligence, this translates into the institutional commitment to investigate without stereotypes, without abuse of force, and with

an objectivity to investigate, which After a legal analysis of the evidentiary data, it must be decided whether or not to pursue criminal action.

Article 215. Obligation to provide information.

Every person or public servant is obliged to timely provide the information required by the Public Ministry and the Police in the exercise of their investigative functions of a specific criminal act. In the event of being summoned to be interviewed by the Public Ministry or the Police, they have the obligation to appear and may only excuse themselves in the cases expressly provided by law. In case of non-compliance, liability will be incurred and will be sanctioned in accordance with applicable laws.

Explanation: Any authority and natural person is legally obliged to deliver the information or documentation that they possess to the public ministry so that they can carry out their investigative activities.

Failure to do so may result in administrative or criminal liability.

Article 216. Proposition of investigation acts.

During the investigation, both the defendant when he has appeared or been interviewed, as well as his Defender, as well as the victim or offended party, may request from the Public Prosecutor all those investigative acts that he considers pertinent and useful for the clarification of the facts. The Public Ministry will order that those that are conducive be carried out. The request must be resolved within a maximum period of three days following the date on which the request was made to the Public Ministry.

Explanation: Both the accused and the victim or offended party, since they do not have the status of authority, can make use of this article to request the public prosecutor to support them in carrying out investigative acts that by their nature cannot be collected by them, a good An example would be to request the vehicle registration of a vehicle from the corresponding authority, due to the fact that the regulations of the registration authorities prohibit the issuance of documentation of this type to individuals, so it is necessary to go to an authority such as the public ministry. for the purpose of obtaining that information and providing it to the party that requests it.

Article 217. Record of investigation acts.

The Public Prosecutor's Office and the Police must keep a record of all the actions carried out during the investigation of crimes, using for that purpose any means that guarantees that the information collected is complete, complete and accurate, as well as access to it by part of the subjects that according to the law have the right to demand.

Each act of investigation will be recorded separately, and will be signed by those who have intervened. If they would not or could not sign, their fingerprint will be printed. In the event that this is not possible or the person refuses to print their fingerprint, the reason will be stated.

The record of each action must contain at least the indication of the date, time and place in which it was carried out, identification of the public servants and other people who have intervened and a brief description of the action and, where appropriate, of Your results.

Explanation: In an accusatory system like the one that is in force throughout Mexico, it is a fundamental part of the process, and in particular the right of defense as well as that of the victim or offended party, to have all the records that appear in the folder to assert their interests in the trial, the defense to prove their point of view, as the victim or offended.

Article 218. Reservation of investigation acts.

The investigation records, as well as all documents, regardless of their content or nature, objects, voice and image records or things that are related to them, are strictly reserved, so only the parties may have access to them. the same, with the limitations established in this Code and other applicable provisions.

The victim or offended party and their Legal Advisor may have access to the investigation records at any time.

The defendant and his counsel may have access to them when he is in custody, is summoned to appear as a defendant or is subject to an act of nuisance and it is intended to receive his interview, from this moment the records may no longer be kept in reserve for the accused or his Defender in order not to affect his right of defense. For the purposes of this paragraph, the provisions of article 266 of this Code shall be understood as an act of nuisance.

In no case may the confidentiality of the records be enforced to the detriment of the accused and his defender, once the order linking the process has been issued, except as provided in this Code or in special laws.

For the purposes of access to public government information, the Public Ministry must only provide a public version of the determinations of non-exercise of criminal action, temporary file or application of an opportunity criterion, provided that a period equal to that of prescription of the crimes in question, in accordance with the provisions of the corresponding Federal or State Penal Code, without being able to be less than three years, nor more than twelve years, counted from the date that said determination has become final.

These judicial criteria will help to better interpret this article:

RESEARCH FOLDER. THE REFUSAL OF THE PUBLIC PROSECUTOR'S OFFICE TO GIVE ACCESS TO IT TO THE INVESTIGATED PERSON AND HIS/HER DEFENDER, DUE TO UPDATE OF THE LEGAL ASSUMPTIONS TO KEEP UNDER RESERVE THE EVIDENCE DATA CONTAINED IN IT, IS IN ACCORDANCE WITH ARTICLES 20, SECTION B, SECTION VI, OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES AND 218 AND 219 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. The aforementioned constitutional precept provides for and

regulates the right of the accused to have an adequate defense, which implies that they be provided with the data that appears in the process and require for his defense. To this end, the Reform Power of the Constitution implicitly established, on the one hand, that the Public Prosecutor's Office must keep confidential the evidence contained in the investigation folder and, on the other, the moments from which the accused and Your defense attorney may have access to said information, by specifying the following hypotheses, when: a) the accused is in custody; b) intends to receive your statement or interview you; and, c) before he appears for the first time before the Control Judge. And, it is from the moment that any of these assumptions is updated that the quality of accused is acquired when being arrested for the commission of a criminal act, or, the indication that the Public Ministry makes against him, either by being called to testify before him as a probable participant in a crime or in the imputation hearing carried out before the Control Judge; moment in which the reservation disappears, so that the accused and his defense attorney can prepare a defense appropriate to their interests, except in exceptional cases established by secondary law to safeguard the success of the investigation. Consistently, in articles 218 and 219 of the National Code of Criminal Procedures, the legislator established the confidentiality of test data and information contained in the investigation folders, specifying that only the parties may have access to it, with the limitations established in the law itself; excepting from this reservation, only the victim or offended party and their legal adviser, since they can have access to the investigation records at any time; and pointed out, in terms similar to the constitutional postulate, what are the moments in which the accused and his counsel can have access to the investigation file, namely when: 1) the accused is in custody; 2) is summoned to appear as a defendant or is the subject of an act of nuisance and it is intended to receive his interview; and, 3) once the accused and his defense attorney have been summoned to the initial hearing. Therefore, if any of these assumptions does not occur, the refusal of the Social Representation to give access to the investigation file to the person subject to investigation and their defender, is in accordance with the aforementioned constitutional and legal articles.

Article 219. Access to records and the initial hearing.

Once summoned to the initial hearing, the accused and his defense attorney have the right to consult the investigation records and obtain a copy, with due opportunity to prepare the defense. In the event that the Public Prosecutor refuses to allow access to the records or to obtain copies, they may go before the Control Judge to resolve the matter.

Article 220. Exceptions for access to information.

The Public Prosecutor's Office may exceptionally request the Control Judge that certain information be kept confidential even after being linked to the process, when necessary to avoid the destruction, alteration or concealment of evidence, intimidation, threat or influence of witnesses to the event. , to ensure the success of the investigation, or to guarantee the protection of persons or legal assets.

If the Control Judge considers the request to be appropriate, he will resolve it and determine the term of the reservation, provided that the information requested is reserved, and is disclosed in a timely manner so as not to affect the right of defense. The reservation may be extended when strictly necessary, but may not be extended until after the accusation has been filed.

CHAPTER II: START OF INVESTIGATION

Article 221. Forms of initiation.

The investigation of the facts that have characteristics of a crime may be initiated by denunciation, by complaint or by its equivalent when required by law. The Public Prosecutor's Office and the Police are obliged to proceed without further requirements to the investigation of the facts of which they are aware.

In the case of crimes that must be prosecuted the communication made by any person, in which the facts that could constitute a crime are made known to the investigating authority, will suffice for the initiation of the investigation.

In the case of anonymous information, the Police verified the veracity of the data provided through the investigative acts that they consider appropriate for this purpose. If the information is confirmed, the corresponding investigation will begin.

When the Public Prosecutor's Office becomes aware of the probable commission of a criminal act whose prosecution depends on a complaint or any other equivalent requirement that an authority must formulate, it will communicate it in writing and immediately to it, in order for it to resolve what is corresponding powers or attributions. The authorities will notify the Public Prosecutor's Office in writing of the determination they adopt.

The Public Prosecutor's Office may apply the criterion of opportunity in the cases provided for by the applicable legal provisions or not initiate an investigation when it is evident that there is no crime to prosecute. The decisions of the Public Prosecutor's Office may be challenged in the terms provided by this Code.

Explanation: The start of the investigation must necessarily start with a complaint or lawsuit. If the crime is a complaint and the person entitled to file a complaint has not done so, the public prosecutor will not be able to initiate the investigation.

In crimes that can be prosecuted, with the sole knowledge of the public prosecutor of the probable criminal act, it can initiate investigations, this logic attends precisely to the fact that crimes are precisely the antisocial ones where the Mexican state, due to criminal policy and achievements in terms of Public security have a particular interest in eradicating them and punishing those responsible for those who commit them, in accordance with the provisions of Article 21 of the Constitution.

There are certain crimes where a complaint from an authority is needed to proceed criminally, such as in crimes of smuggling where the declaration of damage and complaint from the Ministry of Finance and Public Credit is needed, in addition to the fact that this complaint is made by an official competent public for such purposes, if this does not happen, the public prosecutor should be alert of this situation and warn the secretariat to correct the error.

Lastly, the Public Prosecutor's Office may carry out some of the determinations established by the code as the criteria of opportunity or some of the ways to terminate the investigation.

Article 222. Duty to denounce.

Any person who is aware that an act probably constituting a crime has been committed is obliged to report it to the Public Prosecutor's Office and, in case of emergency, to any Police agent.

Whoever in the exercise of public functions has knowledge of the probable existence of an act that the law indicates as a crime, is obliged to report it immediately to the Public Ministry, providing them with all the information they have, making the accused available to them, if they have been arrested. Whoever has the legal duty to report and does not do so, will be entitled to the corresponding sanctions.

When the exercise of the public functions referred to in the preceding paragraph corresponds to cooperation with the authorities responsible for public safety, in addition to complying with the provisions of said paragraph, the intervention of the respective public servants must be limited to preserving the place of the events until the arrival of the competent authorities and, where appropriate, adopt the measures at its disposal to provide emergency medical attention to the injured, if any, as well as make those detained for conduct or in coordination with the police.

They will not be obliged to denounce those who at the time of the commission of the crime hold the status of guardian, curator, ward, spouse, concubine or cohabitant, cohabitant of the accused, relatives by blood or affinity in the ascending or descending straight line to the fourth degree and in collateral by consanguinity or affinity, up to and including the second degree.

Explanation: The obligation to report probably criminal acts belongs to any person who has witnessed it, regardless of whether or not they are a victim of the reported crime or have no interest in punishing themselves.

Likewise, there are public servants who, by the very nature of their functions, have an express legal duty to denounce and act against probably criminal events, where the omission of that can lead to administrative, labor or even criminal offenses.

Finally, a cause of exception is established for a certain group of people who have a degree of kinship with the accused with respect to the obligation to report, who are not required by law to communicate criminal news to them.

Article 223. Form and content of the complaint.

The complaint may be made by any means and must contain, except in cases of anonymous complaint or confidentiality of identity, the identification of the complainant, his address, a detailed account of the fact, an indication of who or who may have

committed it and of the persons who have witnessed it or have news of it and everything that the complainant will know.

In the event that the complaint is made orally, a record will be made in the presence of the complainant, who after reading it, will sign it together with the public servant who receives it. The written complaint will be signed by the complainant.

In both cases, if the complainant is unable to sign, he will stamp his fingerprint, after reading it.

Article 224. Processing of the complaint.

When the complaint is presented directly to the Public Ministry, it will initiate the investigation in accordance with the rules set forth in this Code.

When the complaint is filed with the Police, the latter will inform the Public Prosecutor of said circumstance immediately and by any means, without prejudice to carrying out the urgent procedures that are required, informing the Public Prosecutor of this later.

Article 225. Complaint or other equivalent requirement.

The complaint is the expression of the will of the victim or offended party or of whoever is legally empowered to do so, through which they expressly state before the Public Prosecutor their claim that the investigation of one or more facts that the law indicates as crimes and that require this procedural requirement to be investigated and, where appropriate, the corresponding criminal action is exercised.

The complaint must contain, where appropriate, the same requirements as those provided for the complaint. The Public Prosecutor's Office must ensure that they are duly satisfied in order to, where appropriate, proceed in the terms provided for in this Code. In the case of equivalent procedural requirements, the Public Ministry must carry out the same verification.

COMPLAINT BY OFFENDED PARTY. ALTHOUGH IN ACCORDANCE WITH ARTICLES 221 AND 225 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, THIS IS A REQUIREMENT FOR THE PUBLIC PROSECUTOR'S OFFICE TO BEGIN THE INVESTIGATION OF ONE OR SEVERAL FACTS THAT THE LAW INDICATES AS A CRIME, THIS DOES NOT PREVENT THE INVESTIGATING AGENT AND THE POLICE, BEFORE THE FLAGRANT COMMISSION OF AN ACT THAT MAY CONSTITUTE AN ILLICIT, CARRY OUT THE FIRST CORRESPONDING INVESTIGATIONS. ***The aforementioned precepts establish that the Public Ministry and the Police are obliged to investigate the facts of which they are aware, without requiring further requirements for it; only when the prosecution of the criminal act requires the complaint or an equivalent requirement of some authority, it will be communicated to it in writing in order to resolve what corresponds to it and let the investigating agent know; In the same way, the complaint is the expression of the will of the victim or offended party through which the Public Prosecutor expressly states the claim that the investigation of one or more facts that the law indicates***

as crimes and that require this investigation be initiated. procedural requirement to be investigated and, where appropriate, the corresponding criminal action is exercised. Therefore, although the complaint is a requirement for the Public Prosecutor's Office to initiate the investigation of one or more acts that the law indicates as crimes, this does not prevent the investigating agent and the police, before the flagrant commission of an act that may constitute a crime, carry out the first corresponding investigations, since to carry out such actions they do not initially require a greater requirement, without prejudice to the fact that it is later satisfied. In addition to that, only through the collection of test data can it be determined if the fact indicated as a crime is prosecutable or if it requires a complaint by the offended party.

Article 226. Complaint of persons who are minors or who do not have the capacity to understand the meaning of the fact.

In the case of persons under eighteen years of age, or persons who do not have the capacity to understand the meaning of the fact, the complaint may be presented by those who exercise parental authority or guardianship or their legal representatives, without prejudice to the fact that they can do so on their own. themselves, by their siblings or a third party, in the case of crimes committed against them by those who exercise parental authority, guardianship or their own representatives.

CHAPTER III: RESEARCH TECHNIQUES

Article 227. Chain of custody.

The chain of custody is the control and registration system that is applied to the indication, evidence, object, instrument or product of the criminal act, from its location, discovery or contribution, in the place of the facts or discovery, until the authority authority orders its conclusion.

In order to corroborate the probative material elements and the physical evidence, the chain of custody will be applied taking into account the following factors: identity, original state, collection, preservation, packaging and transfer conditions; places and dates of permanence and the changes that have been made in each custody; Likewise, the name and identification of all the people who have been in contact with these elements will be recorded.

Explanation: The chain of custody must be carried out at all times to transfer from hand to hand, from authority to authority, any indication or object in order to be able to keep track of the object, who has handled or worked on it and to identify the times when each authority had it in its power.

The consequence of not having a chain of custody is not necessarily that a means of conviction is not valued, but rather that this means that the means of conviction is weakened when seeking to prove whether it continues to be and has the same characteristics with which it was collected, and if it does not have the same characteristics, I can prove that this is precisely due to the manipulation of the object or evidence, either due to the very nature of the processes that are applied, either because it is the type of evidence that is consumed with use, and so on.

Article 228. Responsible for chain of custody.

The application of the chain of custody is the responsibility of those who, in compliance with the functions of their assignment or activity, under the terms of the law, have contact with the indications, vestiges, evidence, objects, instruments or products of the criminal act.

When during the chain of custody procedure the evidence, traces or traces of the criminal act, as well as the instruments, objects or products of the crime are altered, they will not lose their probative value, unless the competent authority verifies that they have been modified in such a way. in such a way that they have lost their effectiveness to prove the fact or circumstance in question. The indications, traces or vestiges of the criminal act, as well as the instruments, objects or products of the crime must be concatenated with other evidence for that purpose. The foregoing, regardless of the liability that public servants may incur due to non-observance of this procedure.

Explanation: The object or evidence, as a general rule, does not lose its probative force due to misapplication when carrying out the chain of custody or the vices that may exist around it.

It must be requested that the same test not be valued when it is fully accredited by the interested party that it has been modified or indeed it is not the same evidence due to the first signed link.

CHAIN OF CUSTODY. ITS VIOLATION DOES NOT MAKE THE TEST DATA ILLICIT. Violation of the legal principles of chain of custody does not render the test data related to the respective evidence illegal. The illegality is an issue that concerns the way in which the evidence is obtained while the chain of custody is the way in which it is preserved. In accordance with article 264 of the National Code of Criminal Procedures, the test data obtained against fundamental rights entail their exclusion or nullity; On the other hand, the indications altered due to violation of the chain of custody have an impact on their assessment, since numeral 228 of the same code determines that they will not lose their probative value unless the competent authority verifies that they have been modified in such a way that they lose its effectiveness.

Article 229. Securing of assets, instruments, objects or products of crime.

The instruments, objects or products of the crime, as well as the assets in which there are traces or could be related to it, provided that they are directly related to the place of the facts or the discovery, will be insured during the development of the investigation, in order to that they are not altered, destroyed or disappear. For such purposes, specific controls will be established for its protection, which will attend at least to the nature of the property and the danger of its conservation.

Explanation: It is an obligation of the authorities in charge of investigating the crime, such as the public ministry itself and its auxiliaries, whether they are experts or police officers, to ensure any indication that may be directly related to the crime.

Likewise, it will be important that the appropriate measures are taken to pack them in order to avoid their manipulation, as well as those that could lose their properties due to their nature, it is of the utmost importance that the appropriate measures are taken so that they can be preserved. and with this they can be used and studied during the course of the process.

Article 230. Rules on the insurance of assets.

Assets will be secured in accordance with the following:

I. The Public Prosecutor's Office, or the Police in aid of the latter, must draw up an inventory of each and every one of the assets that are intended to be insured, signed by the accused or the person with whom the investigation is carried out. In the absence or refusal, the relationship must be signed by two eyewitnesses who preferably are not members of the Police and when this happens, who have not materially participated in the execution of the act;

Explanation: At all times there must be a record and inventory of all the assets that are insured for the purposes of being able to incorporate all those objects into the procedure with the corresponding formalities at the time.

In the cases in which the defendant is present, either because the insured property is in possession of the same or another equivalent, he must sign the record where this reflected investigation technique is left.

II. The Police must take the necessary measures for the due preservation of the place of the facts or of the discovery and of the indications, traces, or vestiges of the criminal act, as well as of the instruments, objects or products of the crime insured, and

Explanation: The cordoning off of the place is for excellence the action most used by the police for the purpose of being able to preserve the place of the facts or the discovery, and this has the purpose of controlling the people who can enter a diameter of space where evidence will surely be found for purposes of clarifying the facts.

III. The insured goods and the corresponding inventory will be made available to the competent authority as soon as possible, in accordance with the applicable provisions. It must be reported if the insured goods are evidence, physical evidence, object, instrument or product of the criminal act

Explanation: The evidence that has been found within the place of the facts or the discovery must be immediately made available to the public prosecutor as a general rule, although some of the evidence is materially sent to another authority for reasons of health, in matters expert or other actions for the purpose of clarifying the facts.

MINISTERIAL ASSURANCE OF THE ELECTRONIC FOLIO THAT ASSIGNS AND CONTROLS THE PUBLIC REGISTRY OF PROPERTY AND COMMERCE OF QUINTANA ROO, REGARDING THE PROPERTY SUBJECT OF THE CRIME OF DISPOSAL, DECREED IN THE INITIAL INVESTIGATION STAGE. IT CONSTITUTES AN ACT OF NUISANCE WITH RESPECT TO WHICH THE RIGHT TO A PRIOR HEARING THAT PREVAILS IN THE CRIMINAL PROCESS DOES NOT GOVERN. The seizure decreed on the electronic folio inherent to a real estate (object of the crime of dispossession), constitutes a transitory measure issued by the Representation Social, which does not definitively deprive the person of that right of their property, because it is an act of nuisance and not a private one, with respect to which the right to a prior hearing that prevails in criminal proceedings does not apply; so that if when issuing it, the Public Ministry cited article 229 of the National Code of Criminal Procedures, it satisfies the requirement of legal foundation, and in regard to motivation, it is justified by the need to safeguard the instruments, objects or products of the crime, as well as the goods in which there are traces or could be related to it, so that they are not altered, destroyed or disappear; reason that shows that the legislator established that the aforementioned seizure could be decreed by the investigating authority, of course, under its strictest responsibility, without

requiring prior authorization from the Control Judge or that it is the latter who directly decides so.

ASSURANCE OF A PROPERTY BY THE PUBLIC MINISTRY. ITS EXCESSIVE PROLONGATION IN TIME, VIOLATES THE FUNDAMENTAL RIGHTS OF LEGALITY AND LEGAL SECURITY. The seizure of a property by the Public Ministry is a provisional or transitory measure with the purpose of clarifying the facts that are the subject of the investigation, guaranteeing the reparation of the damage and avoid injury to third parties. Thus, the simple passage of time does not favor the clarification of the facts, on the contrary, it makes it difficult by fading any traces that might exist. Consequently, if said precautionary measure is decreed, whose temporality is excessively prolonged (for one or more years), this is contrary to its provisional or transitory nature, which causes effects contrary to those intended, that is, it does not guarantee security in the patrimony of the litigants, but affects it greatly, which, in turn, violates the fundamental rights of legality and legal certainty.

ASSURANCE OF A PROPERTY BY THE PUBLIC MINISTRY. IF IT IS DECREED INDEFINITELY OR ITS TEMPORARY EXCESSIVELY LONG, IT VIOLATES THE FUNDAMENTAL RIGHTS OF LEGAL SECURITY*. The seizure of a property by the Public Ministry is a provisional or transitory measure with the purpose of clarifying the facts that are the subject of the investigation. investigation, guarantee the repair of the damage and avoid injuries to third parties. Thus, the simple passage of time does not favor the clarification of the facts, on the contrary, it makes it difficult by fading any traces that might exist. Consequently, if said precautionary measure is decreed for an indefinite period or its temporality is excessively prolonged (for one or more years), this is contrary to its provisional or transitory nature, which causes effects contrary to those intended, that is, it does not guarantee security in the patrimony of the litigants, but affects it greatly, which, in turn, violates the fundamental rights of legality and legal certainty.*

Article 231. Notification of seizure and abandonment.

The Public Ministry must notify the interested party or his legal representative of the seizure of the object, instrument or product of the crime, within sixty calendar days following its execution, delivering or making available, as the case may be, a copy of the registry of assurance, so that he manifests what is appropriate to his right.

When the identity or address of the interested party is unknown, the notification will be made by two edicts that will be published in the Official Gazette of the Federation or its equivalent, in the official means of dissemination in the corresponding federative Entity and in a newspaper with national circulation. or state, as appropriate, with an interval of ten business days between each publication. In the notification, the interested party or his legal representative will be warned to refrain from exercising acts of ownership over the insured assets and will be warned that if he does not state what is appropriate to his right, within a term of ninety calendar days following the date of the notification, the assets will

cause abandonment in favor of the Federal Government or the Federal Entity in question, as appropriate.

Once said period has elapsed without any person having appeared to deduct rights over the insured assets, the Public Ministry will request the control judge to declare the abandonment of the assets and the judge will summon the interested party, the victim or offended party and the Public Ministry to a hearing within ten days following the request referred to in the preceding paragraph.

The summons to the hearing will be made as follows:

I. To the Public Ministry, in accordance with the general rules established in this Code;

II. To the victim or offended party, personally and when their address or identity is unknown, by courts and judicial bulletin, and

III. To the interested party personally and when their address or identity is unknown, in accordance with the notification rules provided in this Code.

The Control Judge, when deciding on the abandonment, will verify that the notification made to the interested party has complied with the formalities provided for in this Code; that the corresponding term has elapsed and that no person has appeared before the Public Prosecutor's Office to deduct rights over the insured goods or that these have not been recognized or that the legal requirements have not been covered.

The declaration of abandonment will be notified, where appropriate, to the competent authority that has the assets under its administration so that they are destined to the Federal Government or the corresponding Federal Entity, in terms of the applicable provisions.

Explanation: First of all, the public prosecutor has the obligation to notify whoever considers to have a right over the insured property of said action, for this the investigating body must leave a record of said action, in order to give a copy to the interested party at the time. of the same.

In case of not finding the abandoned person, the prosecutor must publish it in the official gazette, or failing that, in the newspapers with the largest circulation, and in turn, in the event that no one manifests what corresponds to the law, the abandonment will be caused.

After this procedure, the public prosecutor must request the control judge the date and time for a hearing to be held to decree the abandonment, the parties will be heard and, if appropriate, it will be used for the prosecution of justice.

Article 232. Custody and disposition of the insured assets.

When the assets that are insured have been previously seized, intervened, kidnapped or insured, the new seizure will be notified to the authorities that have ordered said acts.

The assets will continue in the custody of whoever has been designated for that purpose, and at the disposal of the judicial authority or the Public Ministry for the purposes of criminal proceedings. If the previous embargo, intervention, kidnapping or seizure is lifted, whoever has them in their custody, will deliver them to the competent authority for administration purposes.

Acts of ownership may not be exercised over the insured assets by their owners, trustees, auditors or administrators, during the time that the seizure lasts in criminal proceedings, except in the cases expressly indicated by the applicable provisions.

The insurance does not imply any modification to the encumbrances or limitations of ownership previously existing on the assets.

Explanation: There may be the possibility that an asset that is necessary to insure for the purpose of generating the investigation in the criminal procedure is already previously insured, if so, it will continue to be available to whoever is, but available to the investigative authority for the purposes of criminal proceedings, that is, it may be used for the purpose of generating expert reports on the property, or any other investigative act that is necessary to achieve the success of the investigation.

Article 233. Registration of insured assets.

The following shall be recorded in the corresponding public registries, in accordance with the applicable provisions:

I. Securing real estate, rights in rem, aircraft, boats, companies, negotiations, establishments, shares, social interests, stock market titles and any other good or right subject to registration or proof, and

II. The appointment of the depository, controller or administrator, of the assets referred to in the previous section. The registration or its cancellation will be carried out without any further requirement than the official letter issued for this purpose by the judicial authority or the Public Ministry.

Explanation: It is the obligation of the ministerial authority to carry out a detailed record of each one of the assurances that it makes, for which reason the following two sections establish the same, this for the purpose of guaranteeing certainty for the parties of what is being carrying out, and on the other hand to be able to generate an adequate technical defense for those who carry out the defense of any criminal process.

Article 234. Fruits of the insured goods.

The fruits or yields of the assets during the insurance period will be given the same treatment as the insured assets that generate them. Neither the seizure of assets nor their conversion to cash imply that they enter the public treasury.

Explanation: If any asset generates a yield during its insurance, these, in the event that they are returned to whoever proves the right over them, must be returned with everything and their yields, thereby guaranteeing the rights of the people who have the right over it. .

Article 235. Securing of narcotics and products related to crimes of intellectual property, copyright and hydrocarbons.

When narcotics provided for in any provision, products related to intellectual property and copyright crimes or goods that imply a high cost or danger due to their conservation are secured, if this measure is appropriate, the Public Ministry will order their destruction, prior authorization or intervention. of the corresponding authorities, having previously photographed or videotaped them, as well as drawing up a record stating the nature, weight, quantity or volume and other characteristics of these, having to collect samples of the same so that they work in the records of the investigation to be initiated.

When hydrocarbons, petroleum products or petrochemicals and other assets are insured, they will be made available to the Federal Public Ministry, who without any delay will proceed to deliver them to the assignees, contractors or permit holders, or whoever is appropriate, who will be obliged to receive them in the same terms, for their final destination, prior inspection in which the nature, volume and other characteristics of these will be determined; preserving representative samples for the elaboration of the expert opinions that are to be produced in the investigation folder and in process, as the case may be.

Explanation: When any type of narcotic is seized, the process that must be followed by the authority of the public prosecutor's office is first to carry out a record of them, and mainly to photograph and video record them for such purposes, in this sense, since it is Once said record has been generated, the process that must be carried out on a regular basis is to destroy them, obviously due to the high risk that their conservation entails, especially in terms of the right to health and the risk that this entails.

In the event that the hydrocarbon is insured, gasoline being the most common example, the public ministry must immediately make it available to whoever has the right to dispose of it, in most cases to PEMEX, to further avoid the detriment to the national economy.

Article 236. Large objects.

Large objects, such as ships, aircraft, motor vehicles, machines, cranes and other similar objects, after being examined by experts to collect evidence found in them, may be videotaped or photographed in their entirety and are recorded in the same way. the places where footprints, traces, narcotics, weapons, explosives or the like were found that could be the object or product of crime.

Explanation: Obviously, in this type of case, the prosecutor's office should be accompanied by experts so that they carry out expert reports on different matters

in order to carry out the analyzes that must be carried out, be it forensic photography, dactyloscopy, or any other necessary for the analysis. .

Article 237. Securing of large objects.

The objects mentioned in the preceding article, after they have been examined, photographed, or videotaped, may be returned, with or without reservations, to the owner, possessor, or legitimate holder, as the case may be, prior demonstration of the quality invoked, as long as they do not have been effective means for the commission of the crime.

Article 238. Assurance of flora and fauna.

The flora and fauna species of ecological reserve that are secured, will be provided with the necessary care and deposited in zoos, nurseries or similar institutions, considering the opinion of the competent agency or institution of higher education or scientific research.

Explanation: When, due to the investigation, there is a need to insure an animal, such as when there are animals that are prohibited from obtaining for the public, such as a lion, it is necessary that the public ministry with the necessary care insure the animal with all the necessary care for the purpose of preserving his health, taking him to a zoo, or similar places, and on the other hand, if there is a need to secure any species that belongs to the fauna, it must be secured and made available.

Article 239. Requirements for vehicle insurance.

In the case of culpable crimes caused by the transit of vehicles, these will be delivered in deposit to whoever is legitimized as their owner or possessor.

Prior to the delivery of the vehicle, the Public Ministry must verify:

I. That the vehicle has no report of theft;

II. That the vehicle is not related to another criminal act;

III. That the other party has been given the opportunity to request and carry out the necessary expert reports, and

IV. That there is no well-founded opposition to the return by third parties, or by the insurer.

Article 240. Securing of vehicles.

In the event that any of the above assumptions occur, the Public Ministry may order the vehicle to be secured and safeguarded until the facts are clarified, subject to judicial approval in terms of the provisions of this Code.

In the judicial approval, it will be determined if the insured goods are indication, physical evidence, object, instrument or product of the criminal act, determining its conservation or its administration, in terms of the applicable provisions.

Article 241. Securing of firearms or explosives.

When firearms or explosives are secured, the Ministry of National Defense will be informed, as well as the other authorities established by the applicable legal provisions.

Explanation: As a general rule, the obligation is established for the authority that seizes weapons to notify the Secretary of National Defense.

In the event that another authority establishes provisions in this regard for the purposes of being informed of this circumstance, they must also be informed of the seizure of assets.

Article 242. Assurance of goods or rights related to financial operations.

Article declared invalid by judgment of the SCJN to Action of Unconstitutionality DOF 06-25-2018

(.....The Public Ministry or at the request of the Police may order the suspension, or the insurance of accounts, credit titles and in general any good or right related to operations that financial institutions established in the country celebrate with its clients and will immediately notify the authority in charge of the administration of the insured assets and the competent authorities, who will take the necessary measures to prevent the respective owners from carrying out any act contrary to the insurance….)

Article 243. Effects of the insurance in lawful activities.

The insurance will not be cause for the closure or suspension of activities of companies, negotiations or establishments with legal activities.

In the case of crimes referred to in the Federal Law to Prevent and Punish Crimes Committed in Hydrocarbons Matters, the Federal Public Ministry will insure the commercial establishment or company providing the service and immediately notify the Assets Administration and Disposal Service with the purpose of which the commercial establishment or insured company is transferred to it.

Before the company is transferred to the Assets Administration and Disposal Service, the illegal product will be removed from the containers of the establishment or company and the legal hydrocarbons will be supplied in order to continue the activities, as long as the company has the necessary resources for the purchase of the product; supply that will be carried out once the company has been transferred to the Assets Administration and Disposal Service for its administration.

In the event that the establishment or company providing the service corresponds to a franchisee or permit holder, the assurance will constitute just cause for the franchisor to terminate the respective contracts in terms of the Industrial Property Law, and in the case of the permit holder, the permission grantor can revoke. For the above, previously the ministerial or judicial authority must determine its destination.

Article 244. Non-insurable things.

Communications and any information generated or exchanged between the accused and persons who are not obliged to testify as witnesses for reasons of kinship, professional secrecy or any other established by law will not be subject to insurance. In any case, they will be inadmissible as a source of information or means of proof.

There will be no place for these exceptions when there are indications that the persons mentioned in this article, other than the accused, are involved as authors or participants in the punishable act or there are well-founded indications that they are covering it illegally.

Article 245. Grounds of origin for the return of insured goods.

The return of insured goods proceeds in the following cases:

I. When the Public Ministry resolves not to exercise criminal action, the application of a criterion of opportunity, the reserve or temporary file, refrains from accusing, or lifts the seizure in accordance with the applicable provisions, or

II. When the judicial authority lifts the seizure or does not decree the confiscation, in accordance with the applicable provisions.

The return will be made in the physical state of conservation that according to its nature acquires the good, or its value.

Article 246. Delivery of goods.

The authorities must return the person who proves or demonstrates rights over the assets that are not subject to confiscation, seizure, restitution or embargo, immediately after carrying out the leading procedures. In any case, evidence will be left by means of photographs or other means that are suitable for these assets.

This return may be ordered in provisional deposit and the holder may be required to exhibit them when required.

Within thirty days following the notification of the return agreement, the judicial authority or the Public Prosecutor's Office will notify the interested party or the legal representative of its resolution, so that within ten days following said notification, they present themselves to collect them, under the warning that if they do not do so, the assets will cause abandonment in favor of the Federal Government or the Federal Entity in question, as appropriate and will proceed in the terms provided in this Code.

When the seizure of the assets has been recorded in the public records, the authority that ordered their return will order their cancellation.

Article 247. Return of insured goods.

The return of the insured goods will include the delivery of the fruits that, if applicable, have been generated.

Prior to the return instruction, the Public Ministry must review that the goods have not caused abandonment in the terms established by this Code.

The return of cash will include the delivery of the principal and, where appropriate, of its yields during the time in which it has been administered, at the rate covered by the Federal Treasury or the corresponding instance in the federative Entities for deposits to the view you receive.

The authority that has administered companies, businesses or establishments, when returning them, will render an account of the administration that it has carried out to the person who has the right to it, and will deliver the documents, objects, cash and, in general, everything that has included the administration.

Prior to the receipt of the goods by the interested party, the latter will be given the opportunity to review and inspect the conditions in which they are found, in order to verify the corresponding inventory.

Explanation: When any asset has been insured for reasons of criminal proceedings and the success of its investigation, the latter will be returned to the part that owns it, as well as the fruits that it would have generated during its insurance.

At all times the owner or whoever has the right to receive the insured property may inspect the insured property so that it is returned in its entirety.

Article 248. Assets that have been disposed of or for which it is impossible to return.

When it is determined by the competent authority the return of the goods that have been converted into cash or there is an impossibility to return them, the person who has the ownership of the right of return must be covered for the value of the same, in accordance with the applicable legislation.

Explanation: In this case, the amount of the value of the property disposed of to the person who proves its ownership must be covered.

It will be necessary to refer to the applicable legislation on the matter for accounting purposes, as well as to indicate the ways in which it will be paid.

Article 249. Assurance for equivalent value.

Article declared invalid by judgment of the SCJN to Action of Unconstitutionality DOF 06-25-2018 (In the normative portion that indicates "decree or")

In the event that the proceeds, instruments or objects of the criminal act have disappeared or cannot be located for reasons attributable to the accused, the Public Prosecutor's Office [will decree or] request the precautionary seizure, seizure and, where appropriate, from the corresponding jurisdictional body. the confiscation of assets owned by the defendant(s), as well as those in respect of which they behave as owners, whose value is equivalent to said product, without prejudice to the applicable provisions regarding domain extinction.

Article 250. Confiscation.

The judicial authority, through a sentence in the corresponding criminal process, may decree the confiscation of assets, with the exception of those that have caused abandonment in the terms of this Code or with respect to those on which the declaration of extinction of domain has been resolved.

When the seizure of the assets has been recorded in the public records, the authority that ordered their confiscation will request the registration of the sentence.

The confiscated cash and the resources obtained from the disposal of the confiscated assets, once the reparation to the victim has been satisfied, and discounted the percentage for indirect operating expenses referred to in the Federal Income Law, for the year corresponding prosecutor, in favor of the Institute for the Administration of Assets and Assets, will be delivered in equal parts to the Judiciary of the Federation, to the Attorney General of the Republic, to the fund established in the General Law of Victims and to the financing of social programs in accordance with the objectives established in the National Development Plan, or other priority public policies, as determined by the Social Cabinet of the Presidency of the Republic referred to in the Organic Law of the Federal Public Administration through the instance designated for such effect. In the case of the distribution of the product of the extinction of domain in the common jurisdiction, they will be delivered in the same proportions to the equivalent instances existing in each Federative Entity.

Article 251. Actions in the investigation that do not require prior authorization from the Control Judge.

The following acts of investigation do not require authorization from the Control Judge:

I. Inspection of the place of the event or discovery

II. The inspection of a place other than that of the facts or of the finding;

III. The inspection of people;

IV. The body check;

V. Vehicle inspection;

VI. The lifting and identification of the corpse;

VII. The contribution of communications between individuals;

VIII. The recognition of people;

IX. Controlled delivery and undercover operations, within the framework of an investigation and under the terms established in the protocols issued for this purpose by the Attorney General;

X. The interview of witnesses;

XI. Rewards, in terms of the agreements issued by the Solicitor for this purpose, and

XII. Others in which judicial control is not expressly provided for.

In the cases of section IX, said actions must be authorized by the Prosecutor or by the public servant to whom he delegates said power. For the purposes of section X of this article, when a witness refuses to be interviewed, they will be summoned by the Public Prosecutor's Office or, where appropriate, by the Control Judge in the terms provided for in this Code.

Explanation: There are investigative acts that, because they do not violate fundamental rights, do not make it necessary to go to the judge for the purpose of requesting "permission" to carry out said act.

Article 252. Investigative acts that require prior authorization from the Control Judge.

With the exception of the investigative acts provided for in the previous article, all investigative acts that imply affectation of rights established in the Constitution, as well as the following, require prior authorization from the Control Judge:

I. The exhumation of corpses;

II. Search warrants;

III. The intervention of private communications and correspondence;

IV. Taking samples of body fluid, hair or hair, blood extractions or other analogues, when the required person, except the victim or offended party, refuses to provide it;

V. The recognition or physical examination of a person when he refuses to be examined, and

VI. The others indicated by the applicable laws.

Explanation: The prosecutor of the public ministry does not have the power to carry out any investigative act under the justification of proving a crime, so it is necessary that when carrying out any of the investigative acts indicated above, or another that affects fundamental rights go to the judge and request authorization to carry it out, since he orders that they be carried out under certain parameters, in order to avoid that the fundamental rights of the accused or the victim are disrupted to a greater extent than is strictly necessary.

These judicial criteria will help to better interpret this article:

BANKING SECRECY. THE REQUEST FOR BANKING INFORMATION – THROUGH THE NATIONAL BANKING AND SECURITIES COMMISSION – MADE BY THE PUBLIC PROSECUTOR FOR THE INVESTIGATION OF CRIMES, MUST BE PRECEDED BY JUDICIAL AUTHORIZATION, OTHERWISE, THE EVIDENCE OBTAINED IS ILLEGAL AND VOID AND THEREFORE, THEY SHOULD BE EXCLUDED FROM THE EVIDENCE TABLE. The First Chamber of the Supreme Court of Justice of the Nation, in the isolated thesis 1a. LXXI/2018 (10a.), title and subtitle: "BANKING SECRECY. ARTICLE 117, SECTION II, OF THE CREDIT INSTITUTIONS LAW, IN ITS TEXT PRIOR TO THE AMENDMENT PUBLISHED IN THE OFFICIAL FEDERAL GAZETTE ON 10 FEBRUARY JANUARY 2014, VIOLATES THE RIGHT TO PRIVATE LIFE.", established that the exception to the protection of the right to privacy of clients or users of credit institutions granted by article 117, section II, of the Institutions Law of Credit (in its text prior to the reform published in the Official Gazette of the Federation on January 10, 2014) to the local ministerial authority, violates the right to private life, because the bank information is not provided as part of the power to investigate crimes, contained in article 21 of the Political Constitution of the United Mexican States, is even less part of the extension of powers to break into private life expressly protected in article 16 of the Federal Constitution. Therefore, the request for banking information made by the ministerial authority –through the National Banking and Securities Commission– for the investigation of crimes, must be preceded by judicial authorization, otherwise the evidence thus obtained is illegal. and devoid of value and, therefore, should be excluded from the evidentiary table. The foregoing, because judicial authorization is essential to legitimize interventions against fundamental rights and, in particular, measures that imply interference in the right to personal privacy, such as access to confidential information referring to the defendant, to verify the imputed crime or criminal responsibility; especially since the legitimate exercise of the investigative activity of the State cannot be left to the will of the ministerial authority, except when there are well-founded reasons for Require personal information that rests on data related to the accused, since only then can it be obtained with the prior authorization of the competent Judge, who must comply with the guidelines on investigative measures provided for in the Constitution, with due respect for fundamental rights.

CHAPTER IV: FORMS OF TERMINATION OF THE INVESTIGATION

Article 253. Power to refrain from investigating.

The Public Prosecutor's Office may refrain from investigating when the facts reported in the complaint, complaint or equivalent act do not constitute a crime or when the background information and data provided allow it to be established that the criminal action or criminal responsibility of the accused has been extinguished. This decision will always be founded and motivated

Explanation: The public prosecutor's office must act at all times with due diligence and objectivity, since the main function of the public prosecutor's office is precisely to exercise criminal action as indicated in constitutional 21, however, also 131 in its fraction V establishes that It must initiate the investigation when appropriate, this also responds to a logic of making efficient and prioritizing the human and budgetary resources of the attorney general's offices, which, after all, are limited.

Even so, the public ministry must have its grounds and motives for issuing this ministerial resolution, so that the victim, who would invariably be the aggrieved party of this resolution, can challenge it.

Article 254. Temporary file.

The Public Prosecutor's Office may temporarily archive those investigations in the initial phase in which there is no background, sufficient data or elements from which lines of investigation can be established that allow proceedings to be carried out to clarify the facts that gave rise to the investigation. The file will subsist as long as data is obtained that allows it to continue in order to bring criminal action.

Explanation: The file is a determination of the prosecutor that is commonly used when complaints are filed where there is not much information regularly focused on identifying the person responsible for a crime.

In a very common example, it could be a robbery at a house where no one saw the person who entered and there were no traces or any other indication that could help identify the person responsible, so in this case the prosecutor chooses to generate this temporary file. momentarily.

Article 255. Non-exercise of the action.

Before the initial hearing, the Public Prosecutor's Office, with the prior authorization of the Prosecutor or the public servant to whom the power is delegated, may order the non-exercise of the criminal action when the background of the case allows it to conclude that in the specific case any of the grounds for dismissal provided for in this Code.

The determination of non-exercise of criminal action, for the cases of article 327 of this Code, inhibits a new criminal prosecution for the same facts with respect to the accused, unless it is for various facts or against a different person.

Explanation: The non-exercise of criminal action is a resolution issued by the Public Prosecutor's Office, where the purpose of its resolution is to "shelf" the investigation.

For this, one of the cases of dismissal must first be updated, which are the following:

I. The act was not committed;

II. The act committed does not constitute a crime;

III. The innocence of the accused appears clearly established;

IV. The accused is exempt from criminal responsibility;

V. Once the investigation has been exhausted, the Public Ministry considers that it does not have sufficient elements to found an accusation;

VI-. The criminal action has been extinguished for any of the reasons established in the law;

VII. A subsequent law or reform repeals the crime for which the process is being followed;

VIII. The fact in question has been the subject of a criminal proceeding in which a final sentence has been handed down with respect to the accused;

IX. Death of the defendant, or

X. In all other cases provided by law.

Article 256. Cases in which the opportunity criteria operate.

Once the investigation has been initiated and prior objective analysis of the data contained therein, in accordance with the regulatory provisions of each Attorney General's Office, the Public Ministry may refrain from bringing criminal action based on the application of opportunity criteria, provided that, in case, the damages caused to the victim or offended have been repaired or guaranteed.

Explanation: The opportunity criterion is a procedural figure that allows the prosecutor of the public ministry to terminate the investigation of a criminal act, that is, it releases the accused from the accused facts, as long as the rules established in the provisions are complied with. regulations of each prosecutor's office and have repaired the damage caused to the victim and offended reason for the fact that gave rise to the investigation.

The opportunity criteria will be applied in any of the following cases:

I. In the case of a crime that does not have a custodial sentence, has an alternative sentence or has a custodial sentence whose maximum punishment is five years in prison, provided that the crime has not been committed with violence;

Explanation: The rule is clear in this fraction, only crimes with penalties equal to or less than 5 years can be candidates for the opportunity criterion to be applied, where necessarily the public prosecutor will have to have already guaranteed the repair of the damage to the victim or offended to be able to apply the same.

II. In the case of crimes of patrimonial content committed without violence on persons or negligent crimes, provided that the accused has not acted while intoxicated, under the influence of narcotics or any other substance that produces similar effects;

III. When the defendant has suffered serious physical or psycho-emotional damage as a direct consequence of the criminal act, or when the defendant has contracted a terminal illness that makes the application of a sentence notoriously unnecessary or disproportionate;

Explanation: The prosecutor of the public ministry may "forgive" a defendant when, due to the same crime, he has resulted in such serious damage that it is disproportionate to seek punishment, or who already has a serious illness.

A clear example of the first case is a family that travels in their vehicle on the highway, the driver loses control of it and due to the accident his son dies. In this case, the prosecutor can dispense with seeking to accuse the father of the crime "manslaughter"

IV. The penalty or security measure that could be imposed for the criminal act that is unimportant in consideration of the penalty or security measure already imposed or the one that could be imposed for another crime for which you are being prosecuted regardless of jurisdiction;

V. When the accused provides essential and effective information for the prosecution of a more serious crime than the one charged with, and agrees to appear in court;

Explanation: this fraction refers to the so-called "snitch", which deals with the defendant who is being investigated for a less serious crime to another that is being investigated, and which, in the opinion of the prosecution, has important information that can help clarify the other. fact of greater relevance to the prosecution.

An example of a informer is a person who is being investigated for tax fraud, however the prosecutor of the public ministry wants to find the invoicer who sold him the apocryphal invoices, in this case, the prosecutor can ask the person accused of tax fraud to Provide your testimony and documents to reach the billing company in exchange for an opportunity criterion.

VI. When, due to the causes or circumstances surrounding the commission of the punishable conduct, criminal prosecution is disproportionate or unreasonable.

VII. It is repealed.

The criterion of opportunity may not be applied in cases of crimes against the free development of personality, family violence, or in cases of tax crimes or those that seriously affect the public interest. In the case of fiscal and financial crimes, prior authorization from the Ministry of Finance and Public Credit, through the Federal Prosecutor's Office, only the assumption of section V may be applied, in the event that the accused provides information that contributes to the investigation and prosecution of the final beneficiary of the same crime, taking into consideration that it will be the latter who will be obliged to repair the damage.

The Public Prosecutor's Office will apply the opportunity criteria based on objective reasons and without discrimination, assessing the special circumstances in each case, in accordance with the provisions of this Code as well as the general criteria issued by the Prosecutor or equivalent for that purpose.

The application of the criteria of opportunity may be ordered at any time and even before the order to open the trial is issued. The application of the opportunity criteria must be authorized by the Attorney or by the public servant to whom this power is delegated, in terms of the applicable regulations.

Article 257. Effects of the criterion of opportunity.

The application of the criteria of opportunity will extinguish the criminal action with respect to the author or participant in whose benefit the application of said criterion was ordered.

If the decision of the Public Prosecutor's Office is based on any of the procedural assumptions established in sections I and II of the previous article, its effects will be extended to all the accused who meet the same conditions.

In the case of section V of the previous article, the exercise of the criminal action will be suspended, as well as the term of the prescription of the criminal action, until the defendant appears to give his testimony in the procedure regarding which he provided information. , moment from which, the agent of the Public Ministry will have fifteen days to definitively decide on the origin of the extinction of the criminal action.

In the event referred to in section V of the preceding article, the statute of limitations for criminal action will be suspended.

Article 258. Notifications and judicial control.

The determinations of the Public Prosecutor's Office on the abstention from investigating, the temporary file, the application of an opportunity criterion and the non-exercise of criminal action must be notified to the victim or offended party, who may challenge them before the control Judge within the ten days after they are notified of said resolution.

In these cases, the Control Judge will convene a hearing to decide definitively, summoning the victim or offended party, the Public Ministry and, where appropriate, the accused and his Defender.

In the event that the victim, the offended party or their legal representatives do not appear at the hearing despite having been duly summoned, the Control Judge will declare the challenge without matter. The resolution that the Control Judge dictates in these cases will not admit any appeal.

Explanation: All the determinations of the prosecutor of the public ministry that have as a consequence that the investigation or the process ends obviously have a negative effect on the victim or offended and a benefit to the accused of the crime.

That is why the law contemplates this means of defense in favor of the victims or offended to find out about the ministerial resolution issued, so they can go to the control judge, who will decide if the prosecutor of the public ministry generated his resolution in accordance with right, or on the contrary, that this was not legally carried out, and consequently the control judge will order that the investigation or process continue its course, that is, that what was determined by the prosecutor has no effect.

TITLE IV: OF THE TEST DATA, MEANS OF TEST AND TESTS

SINGLE CHAPTER: COMMON PROVISIONS

Article 259. Generalities.

Any fact can be proven by any means, as long as it is lawful. The evidence will be assessed by the Court in a free and logical manner.

The background of the investigation collected prior to the trial lacks probative value to support the final sentence, except for the express exceptions provided for in this Code and in the applicable legislation.

For the purposes of issuing the final sentence, only those tests that have been presented at the trial hearing will be valued, except for the exceptions provided for in this Code.

Explanation: Within the criminal procedure, any means can be used to prove any fact, with the limitation that it is of lawful origin.

There are generally so-called "suitable" tests for the purpose of proving certain facts, exemplifying the ownership of a vehicle, surely the suitable test would be the invoice of said vehicle, however this does not mean that other means cannot be used, such as witnesses who affirm that the vehicle is owned by the aforementioned person, for quoting in this way.

When appearing in court, the means of proof must be presented in accordance with the rules for their relief, so that the simple background of investigation may not constitute proof.

Finally, only the evidence presented at the hearing will be considered, with exceptions, such as the fact that advance evidence has been previously presented.

Article 260. Background investigation.

The research history is any record included in the research folder that serves as support to provide test data.

RESEARCH FOLDER. WHEN THE INVESTIGATION STAGE OF THE ACCUSATORY AND ORAL CRIMINAL PROCEDURE SYSTEM IN WHICH IT IS INTEGRATED IS BEING DEFORMALIZED, ONLY ACTIONS SHOULD BE REGISTERED IN IT THAT, IN TERMS OF ARTICLE 217, IN RELATION TO MISCELLANEOUS 260, BOTH OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, PROPERLY CONSTITUTE RESEARCH BACKGROUND (TEST DATA), FROM WHICH EVENTUALLY MAY BE GENERATED IN THE ORAL TRIAL.The accusatory system is characterized, mainly, because there is a well-defined division between the functions of jurisdiction and prosecution, which are developed during the different stages of the procedure, through a methodology of hearings that promote orality and allow debate between the parties, based on the principle of contradiction. These stages have clearly

established objectives, but in a generic way it can be said that, in the first stages, of research (initial and complementary) and intermediate, preliminary issues are elucidated; while, in the trial stage, the essential ones. The foregoing shows that the accusatory and oral criminal procedure system is designed in such a way that the trial constitutes its central procedural stage, in which full respect for the human rights of the parties is ensured; For this reason, it was established that the preliminary stages be in charge of a Control Judge, different from the one who, where appropriate, will hear the trial; a lower evidentiary standard to resolve the requests for arrest warrants and orders of link to process; and, the distinction between test data, test means and evidence. Due to the pre-eminence given to the trial stage, the result is the deformalization of the investigation, since the Public Prosecutor's Office should no longer create a preliminary investigation file, whose content was the basis of the trial, since it provided the greatest number of relevant tests to decide the contention, but, in terms of the article217, in relation to the diverse260, both of the National Code of Penal Procedures, should only integrate an investigation folder with the record of those acts that have the character of antecedents of the investigation, which are those from which test data is generated to establish that an act was committed that the law indicates as a crime and that there is a probability that the accused committed it or participated in its commission and of which, eventually, evidence will be produced in the oral trial. This means that there is no charge for the investigative authority to integrate in said folder, letters or various communications, nor to record each of the acts that it performs since, it is reiterated, it should only record actions that, in the terms described, constitute investigative actions themselves.

Article 261. Test data, means of proof and evidence.

The test data is the reference to the content of a certain means of conviction not yet released before the Court, which is found to be suitable and pertinent to reasonably establish the existence of a criminal act and the probable participation of the accused.

The means or elements of evidence are any source of information that allows the reconstruction of the facts, respecting the procedural formalities provided for each of them.

Evidence is called all certain or probable knowledge about a fact, which entering the process as a means of proof in a hearing and vented under the principles of immediacy and contradiction, serves the Court of prosecution as an element of judgment to reach a certain conclusion about the facts that are the subject of the accusation.

Explanation:

1. ***Proof data: It is all the record that is found within the investigation folder that serves to prove the facts accused by the prosecution, legal advice or defense.***

2. ***Means of evidence: It is the source that verbalizes the evidence, such as the person who appears in court to issue his testimony.***

3. ***Evidence: It is the information that has already been included in the trial for its subsequent evaluation.***

Article 262. Right to offer evidence.

The parties will have the right to offer evidence to support their statements in the terms provided in this Code.

Explanation: The victim or victim, the victim adviser, the defendant, the defender and the public prosecutor have the right to offer evidence to support the factual propositions that they want to incorporate into the process.

The court body when admitting the entry of evidence into the process must ensure that all enter the same, this with the purpose of the process which is to clarify the facts, protect the innocent, ensure that the guilty does not goes unpunished and that the damage caused by it be repaired, however, you must be careful when excluding any means of proof based on the rules established in numeral 346 of this code.

Article 263. Evidence legality.

The data and evidence must be legally obtained, produced and reproduced and must be admitted and released in the process under the terms established in this Code.

Explanation: All the facts and circumstances of the process must be proven, and these proofs must be obtained and incorporated legally, without violating formalities or human rights, so otherwise they may be null.

Article 264. Nullity of the test.

Illegal evidence is considered any data or evidence obtained in violation of fundamental rights, which will be grounds for exclusion or nullity. The parties will enforce the nullity of the means of proof at any stage of the process and the judge or Court must rule on the matter.

Article 265. Assessment of the data and evidence.

The Jurisdictional Body will freely assign the corresponding value to each of the data and evidence, in a free and logical manner, having to adequately justify the value given to the evidence and will explain and justify its assessment based on the joint, comprehensive and harmonious appreciation of all the evidentiary elements.

These judicial criteria will help to better interpret this article:

EVIDENCE IN THE ACCUSATORY CRIMINAL PROCEDURE SYSTEM. ITS FREE AND LOGICAL ASSESSMENT BY THE COURT IN TERMS OF ARTICLE 20, SECTION A, SECTION II, OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES.*The assessment of the evidence constitutes the decision-making phase of the evidentiary procedure, since it is the judicial pronouncement on the conflict submitted to prosecution. It is regularly defined as the jurisdictional activity by virtue of which the judge, by means of some valuation method, assesses the evidence, delimiting its content, in order to establish whether certain facts have been proven or not, having to explain such process in the sentence and the obtained result. For this reason, theoretical valuation systems have been created, distinguishing between legal or assessed evidence, as well as free and mixed evidence, which make it possible to determine the existence of a fact that has been proven or the lack of evidence. Starting from the constitutional reform in matters of criminal justice and public security, published in the Official Gazette of the Federation, on June 18, two thousand and eight, the elements for an accusatory and oral criminal process were introduced, highlighting the modification to the article20 of the Political Constitution of the United Mexican States, in which the corresponding guidelines were established. Section II of section A of said constitutional precept, essentially provided that the presentation and evaluation of the evidence in the new process falls exclusively on the Judge, which must be carried out freely and logically. In this sense, under the new perspective of the accusatory criminal process, the Constituent Assembly considered that the evidence did not have a previously assigned legal value, but that the guidelines would focus on observing the rules of logic, scientific knowledge and the maxims of experience. , without the judge having absolute freedom that implies arbitrariness on his part (intimate conviction), but rather such power must be limited by sound criticism and the logical way of evaluating them. In this perspective, the main point of said assessment will be the objective justification that the judge makes in the sentence regarding the scope and probative value that he confers on the evidence to motivate his decision.*

TITLE V: INVESTIGATION ACTS

CHAPTER I: GENERAL PROVISIONS ON ACTS OF NUISANCE

Article 266. Acts of annoyance.

Any act of nuisance must be carried out with respect for the dignity of the person in question. Before the procedure is carried out, the authority must inform you about your rights and request your cooperation.

A forced search will be carried out only if the person is unwilling to cooperate or resists. If the person subject to the procedure does not speak Spanish, the authority must take reasonable steps to provide the person with information about their rights and to request their cooperation.

Explanation: In accordance with the provisions of this article and constitutional numeral 16 that regulates acts of nuisance, which must be understood as those that disrupt, at least temporarily, the freedom of movement of a person investigated for a crime, which It can be updated from a summons to appear at the ministerial headquarters to a personal inspection, which must always be carried out in accordance with the preventive controls that the police authorities must observe, where the powers to be able to disrupt the freedom of transit and the limits of inspection of the property are dealt with in accordance with the existing evidence in that sense.

CHAPTER II: INVESTIGATION ACTS

Article 267. Inspection.

The inspection is an act of investigation on the state that places, objects, instruments or products of crime are kept.

Everything that can be directly appreciated by the senses will be the subject of inspection. If deemed necessary, the Police will be assisted by experts.

When carrying out an inspection, the persons who are present at the place of the inspection who can provide some useful information for the clarification of the facts may be interviewed. All inspection must be recorded in a record.

Explanation: The inspection is always important in order to generate points of view about what happened at the scene.

Generally, the inspection of some place, regularly that of the facts, or where findings of the crime are found, is carried out by the investigative police dependent on the attorney general's offices, who are the ones who are legally empowered to carry out investigations around the crimes.

It is important to point out that when it comes to scenes of the fact or complicated discovery, that is, where there could be dispersed evidence in different places, or when the data establish that the crime could have been carried out in different places sequentially and successively , is that it is important to ask the experts who are regularly from field criminalistics and chemistry, who will be in charge of carrying out expert reports in the field of forensic photography, gathering evidence and evidence, as well as collecting stains, or materials that are subject to investigation. chemical identification.

Article 268. Inspection of people.

In the investigation of crimes, the Police may carry out an inspection of a person and their possessions in the event of the crime, or when there are indications that they are hiding instruments, objects or products related to the act in their clothes or attached to their body. considered as a crime under investigation. The review will consist of an external exploration of the person and their possessions. Any inspection that involves the exposure of intimate parts of the body will require judicial authorization. Before any inspection, the Police must inform the person of the reason for said inspection, respecting their dignity at all times.

Explanation: In the case of acts of nuisance such as this case, the police authority that carries out these tasks must at all times use the rules for provisional preventive controls, where only if there are indications that the person may having some type of object related to an illegal act inside their clothes is that it would be appropriate to do so. Fundamental rights must be respected at all times to carry out this act.

In the event that the person who is requested to review refuses to be inspected, their refusal must be obtained, and with this they can request the control judge to issue the order for said inspection to be carried out.

Article 269. Body inspection.

During the investigation, the Police or, as the case may be, the Public Prosecutor's Office, may request any person to voluntarily provide samples of body fluid, hair or hair, body examinations of a biological nature, blood extractions or other analogues, as well as allows you to obtain internal or external images of any part of the body, as long as it does not imply risks to the health and dignity of the person.

The person must be previously informed of the reason for the contribution and of the right they have to refuse to provide said samples. In cases of crimes involving violence against women, under the terms of the General Law on Women's Access to a Life Free of Violence, body inspection must be carried out in full compliance with the informed consent of the victim and with respect for your rights.

The samples or images must be obtained by specialized personnel, who in any case must be of the same sex, or the sex that the person chooses, with strict adherence to respect for dignity and human rights and in accordance with the protocols established. to that effect, the Attorney General's Office issues The samples or images obtained will be analyzed and ruled on by experts in the field.

Explanation: The body search is a necessary act of investigation that the public prosecutor has at its disposal, it is of the utmost importance that these procedures are carried out under the action protocols that the attorney general's offices must issue in order not to violate rights.

Body searches must be carried out by people of the same sex at all times, based on work protocols and informed consent must be obtained at all times regarding the actions that will be carried out and for what purposes they will be used.

Article 270. Taking samples when the requested person refuses to provide them.

If the person to whom the voluntary contribution of the samples referred to in the previous article has been requested refuses to do so, the Public Ministry itself or at the request of the Police may request the Judicial Body, by any means, the immediate authorization of the practice of said act of investigation, justifying the need for the measure and expressing the person or persons on whom it is to be carried out, the type and extent of the sample or image to be obtained. If the required authorization is granted, the Court must authorize the Public Prosecutor so that, in the event that the person to be inspected is no longer before him, order his location and appearance so that the corresponding act can be verified.

When resolving the request of the Public Prosecutor's Office, the Court must take into account the principle of proportionality and justify the need for the application of said measure, in the sense that there is no other less burdensome for the person who will be

examined. or for the accused, which is equally effective and suitable for the purpose pursued, justifying it in view of the seriousness of the fact under investigation.

A trusted person of the examinee or the defense lawyer in the case of the accused may be present at the sample taking, who will be previously warned of such right. In the case of minors, whoever exercises parental authority, guardianship or curatorship of the subject will be present. In the absence of any of these, the Public Ministry must be present in its capacity as social representative.

In the case of unimputable persons who have a disability, the necessary support will be provided so that they can make the corresponding decision.

When there is a danger of fading of the means of proof, the request will be made by any expeditious means and the Court must immediately authorize the practice of the act of investigation, provided that the conditions indicated in this article are met.

Explanation: Whenever the person from whom a sample is being requested refuses to provide, it is at that moment that the right of the public prosecutor arises either by their own decision or by express request of the police for the purpose of going before the body jurisdiction and request authorization to carry out the aforementioned investigative practice.

It is of the utmost importance to establish that this article authorizes the social representation to carry out these samplings of people even if they do not have the character of defendants at the time of trying to carry them out, so if the line of investigation requires carrying out this act in order to clarify the fact can be done. When going to the court in any way, the judge must be informed about the need for the measure and the justification for it, so if the judge considers that there is insufficient reason to take the measure or that what is intended to be found may be collected by another source, the same may be denied.

The rights of the people who are requested to take samples must be observed at all times in accordance with the provisions of the third and fourth paragraph of this article.

Finally, in the event that the sample may fade due to the simple passage of time, for example in the event of a traffic accident and there are indications that the driver was intoxicated, and therefore, alcohol may come out. of body of the same, is that the social representation must act quickly to obtain the aforementioned sample.

Article 271. Collection and identification of corpses.

In cases where death is presumed due to unnatural causes, in addition to other appropriate procedures, the following will be carried out:

I. The inspection of the body, its location and the place of the events;

Explanation: It is of the utmost importance that the team of ministerial agents carry out these investigative acts, since at the time it will be important that this information is at hand for medical examiners and the public ministry itself, information that will be important to be able to prove the facts .

II. The lifting of the corpse;

Explanation: The team of experts or forensic medicine personnel must approach the place of the events or the discovery to be able to take all the appropriate precautions and techniques for the transfer of the corpse at all times.

III. The transfer of the corpse;

Explanation: The corpse must be immediately transferred to forensic medicine so that the legal autopsy can be performed, the immediacy of this act is of the utmost importance, because it is essential for the investigation to find all the findings that the body presents and avoid for one of them to disappear.

IV. The description and corresponding expert reports, or

Explanation: It is of the utmost importance that the Public Prosecutor's Office order the expert reports corresponding to the corpse, since many findings of the corpse can disappear quickly, such as bruises, scratches, among others.

V. Exhumation under the terms provided in this Code and other applicable provisions.

Explanation: The public ministry must act with full responsibility when seeking to carry out an exhumation of the corpse, which in accordance with the provisions of the same article 252 of the adjective codification requires authorization from the control judge to be able to be practiced, where The reason for its realization must be justified.

When the investigation does not result in data related to the existence of a crime, the Public Ministry may authorize the waiver of the necropsy.

Explanation: The public ministry must at all times be exhaustive when investigating whether the causes of death are natural, through all the sources of information available to it, and only in this way can it order to waive it.

If the corpse has been buried, it will be exhumed under the terms provided in this Code and other applicable provisions. In any case, once the corresponding inspection or necropsy has been carried out, immediate burial will proceed, but the corpse may not be cremated.

Explanation: This act of investigation requires judicial authorization, so judicial control will have to be carried out for such purposes.

When the identity of the corpse is unknown, the appropriate expert reports will be carried out to proceed with its identification. Once identified, it will be delivered to relatives or to those who invoke title or sufficient reason, prior authorization from the Public Ministry, as soon as the autopsy has been performed or, where appropriate, dispensed.

Article 272. Expert reports.

During the investigation, the Public Prosecutor's Office or the Police with its knowledge, may order the practice of the expert reports that are necessary for the investigation of the fact. The written opinion does not exempt the expert from the duty to testify at the trial hearing.

Explanation: As an assistant to the public prosecutor's office in the investigation of crimes, the experts must attend to the requests of the public prosecutor's office when carrying out expert reports, the same requests that must be pertinent to the specific case.

Based on the litigation techniques and forms of incorporation of information into it, the expert is the one who must appear before the court for the purpose of introducing by his own voice and visual support what has been concluded from his opinion.

Article 273. Access to evidence.

The experts who prepare the opinions will have access at all times to the evidence on which they will be concerned, or to which reference will be made in the interrogation.

Explanation: Based on the expert doctrine, the experts can draw their conclusions from bibliographic information, interviews and any other source of information that helps to make their conclusions.

The public ministry must make this information visible to the experts so that they can draw their conclusions.

Article 274. Irreproducible expertise.

When an expert opinion is carried out on objects that are consumed when being analyzed, the first analysis will not be allowed to be verified except on the amount strictly necessary for it, unless its existence is scarce and the experts cannot issue their opinion without consuming it. completely. This last assumption or any other similar one that prevents an independent expert opinion from being carried out later, must be notified by the Public Prosecutor's Office to the defendant's Defender, if he has already been appointed, or to the Public Defender, so that if he considers it necessary, the experts of both parties, and jointly practice the examination, or, so that the defense expert attends to witness the performance of the expert opinion.

The expert must be admitted as a means of proof, notwithstanding that the expert appointed by the Ombudsman for the accused does not appear at the performance of the expert opinion, or he omits to designate one for that purpose.

Explanation: In the case of expert reports that are consumed by the simple passage of time or when carrying out a study on them, such as a chemical substance that may fade or that a sample needs to be taken and it may disappear. for any reason, is that the prosecutor must guarantee the right of defense and notify him about this situation so that he can appoint experts and that a different opinion or expert can be generated on the same object or substance.

The fact that the prosecutor omits this point will directly affect the right of defense.

Article 275. Special expert reports.

When different expert opinions must be carried out on persons who have been sexually assaulted or when the nature of the criminal act warrants it, an interdisciplinary team must be integrated with professionals trained in victim care, in order to concentrate in a single session the interviews that this requires, for the preparation of of the respective opinion.

Explanation: International treaties and legislative development have been considerably strengthening the rights of victims, and even more so when it comes to sexual crimes.

Non-revictimization includes precisely that the person attacked is not made to relive the event that occurred more than necessary, unnecessary sessions in public prosecutors or their bureaucratization, which prevent the victim from overcoming the events experienced as quickly as possible.

Article 276. Contribution of communications between individuals.

Communications between individuals may be voluntarily contributed to the investigation or criminal proceedings, when they have been obtained directly by one of the participants in it.

The communications provided by individuals must be closely linked to the crime under investigation, so that in no case will the judge admit communications that violate the duty of confidentiality with respect to the subjects referred to in this Code, nor will the authority provide support. referred to in the preceding paragraph when said duty is violated.

The duty of confidentiality is not violated when there is the express consent of the person with whom said duty is kept.

Explanation: Article 16 of the Constitution in its twelfth paragraph regulates the intervention of private communications.

For the purposes of criminal proceedings, it is legal and appropriate for any of the parties, or even a witness, to provide communications to the process, taking as an

example the victim giving the prosecutor his cell phone in which, through the WhatsApp application, he received threats of death of the person accused of attempted murder.

However, like all rights and freedoms, there are limitations, so only the information that is related to the criminal acts should be provided.

Article 277. Procedure to recognize people.

The recognition of people should be practiced with the greatest possible reserve.

The recognition will proceed even without the consent of the accused, but always in the presence of his Defender. Whoever is summoned to carry out a recognition must be located in a place from which they are not seen by the persons likely to be recognized. The necessary provisions will be adopted so that the accused does not alter or hide his appearance.

The recognition must present the accused together with other people with similar physical characteristics unless the conditions of the investigation do not allow it, which must be recorded in the corresponding record of the proceeding. In all recognition procedures, the act must be carried out by a ministerial authority other than the one directing the investigation. The practice of identification rows must be carried out sequentially.

In the case of minors or in the case of victims or offended by the crimes of kidnapping, human trafficking or rape who must participate in the recognition of persons, the Public Ministry will provide special measures for their participation, with the purpose of safeguarding their identity and emotional integrity. In the practice of such acts, the Public Prosecutor's Office must count, where appropriate, with the help of experts and with the assistance of the minor's representative.

All identification procedures must be registered and said register must include the name of the authority that was in charge, the eyewitness, the people who participated in the identification line and, where appropriate, the Ombudsman.

Explanation: The recognition of people is done as follows:

The public ministry will look for people who have physical characteristics similar to the accused, and later a gesell camera will be used for the purpose of placing the people and pointing out the accused person.

The public ministry, which should not be the one conducting the investigation, must notify the defendant's defense for the purpose of being present and verifying that this act of investigation is carried out with respect to the formalities of the process.

The act of investigation must be carried out sequentially, that is, all the people must meet at the same time to be recognized, and not simultaneously, that is, going from one to one.

The necessary protocols must be activated in the case of victims of kidnapping, rape and human trafficking, as well as minors, in order to avoid any emotional re-victimization, due to the effects that seeing the person again may cause. accused.

These judicial criteria will help to better interpret this article:

RECOGNITION OF PERSONS PROVIDED FOR IN ARTICLE 277 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. THE REQUIREMENT OF THE THIRD PARAGRAPH OF SAID PRECEPT, REGARDING THAT IT SHOULD BE CARRIED OUT BY A DIFFERENT MINISTRY AUTHORITY FROM THE ONE DIRECTING THE INVESTIGATION, REFERS TO THAT IT SHOULD NOT BE RESPONSIBLE FOR ESTABLISHING THE DIRECTION TO BE FOLLOWED BY THE INVESTIGATION, ACCORDING TO ITS OWN THEORY OF THE CASE, WHO CARRIES OUT THE DILIGENCE.* ***In order to give an adequate connotation to the requirement that said act of investigation be carried out by a ministerial authority other than the one directing the investigation, it is necessary to delve into the nature of the recognition of persons, understood as a formal act, by virtue of which tries to know the identity of a person, through the intervention of another, who when seeing it among several affirms or denies knowing it or having seen it in certain circumstances. It is a means of proof whose result can be positive or negative, depending on whether or not identification is achieved. But in both cases the data will be recognition and will have provided an element of conviction. In addition, the psychological component that any act of recognition implies, where the image that remains in the memory of the moment of the fact is interspersed, with the one that is perceived in the diligence itself, means that it is conceived within those means of proof that the doctrine has called "irreproducible". In this sense, it is understandable that the recognition of persons must be carried out by a ministerial authority other than the one directing the investigation, since this guarantees that the procedure is carried out under a purely objective criterion, which allows obtaining a reliable result, either in for or against the defendant, regardless of the lines of investigation established by the person responsible for the file. However, it should be emphasized that what the National Code of Criminal Procedures prohibits is that the person responsible for establishing the direction that the investigation will follow, according to their own theory of the case, be the one who carries out the diligence. Then, the mention of other acts within the investigation, in which the same ministerial authority that carried out the recognition intervened, is not, by itself, sufficient reason to consider that action illegal, since it should not be forgotten that in At all times, the institution of the Public Ministry must act diligently to integrate the investigations, avoiding delays that may lead to the loss of evidence, so the possibility that another agent intervenes in the same file will depend on the specific circumstances that arise. In this context, to verify compliance with the aforementioned requirement, the position held by the ministerial authority that practices the procedure must be taken into account in relation to the investigation folder and the causes that motivated its intervention, but above all, for the executing body to conduct itself objectively and avoid any type of inducement or confusion, for which it must ensure the faithful observance of the other formalities referred to in procedural legislation, such as the presence***

of the defendant's defense attorney, in respect of their right of defense, as well as their presentation together with other people with similar physical characteristics, thus guaranteeing an objective and reliable result.

Article 278. Plurality of recognitions.

When several people must recognize a single person, each recognition will be performed separately without communicating with each other. If a person must recognize several, the recognition of all may be carried out in a single act, provided that it does not harm the investigation or the defense.

Explanation: The rules for the recognition of people will be carried out one by one following the rules explained in the previous article.

In the event that more participants in the act must be recognized, the recognition of all the persons may be carried out within a single act, but the defense may state its point of view for the purpose of verifying if the right of defense is not disrupted.

Article 279. Identification by photography.

When it is necessary to recognize a person who is not present, their legally obtained photograph may be displayed to the person who must carry out the recognition together with that of other people with similar characteristics, observing the rules of recognition of persons, with the exception of the presence of the Ombudsman A record of the photographs displayed must be kept.

In no case shall the witness be shown photographs, computerized or hand-drawn portraits, or electronic facial identification images if the identity of the accused is known to the Police and they are available to participate in a video identification, identification queue, or photographic identification. .

These judicial criteria will help to better interpret this article:

RECOGNITION OF THE DEFENDANT BY A PHOTOGRAPH. IF A NEW APPREHENSION ORDER IS ISSUED AGAINST THE PERSON BASED ON SAID DILIGENCE, IT SHOULD NOT BE EXCLUDED IF IT WAS CARRIED OUT IN COMPLIANCE WITH PROCEDURAL FORMS, EVEN WHEN THE PROCEDURE HAS BEEN GRANTED PREVIOUSLY DUE TO NON-OBSERVANCE THEREOF.* ***It corresponds to the constitutional scrutiny of each specific case to determine if once the sentence that granted the amparo promoted against the order of connection to the process has been fulfilled, the responsible authority issued a subsequent arrest warrant, claimed in a second amparo, supporting its new act. in proceedings conditioned by the recognition of a person by a photograph (defendant) that was the subject of the initial guardianship for having been practiced without observing the respective procedural forms. Consequently, once the execution has been completed, the evidence collected to identify one of the participants in the crime should not be excluded without the corresponding analysis if, as in the case, the subsequent practice respected the procedural forms,***

in addition, the statements of the victims only strengthen the data previously provided for this purpose, which prevents them from being considered as acquired from non-existent illegal evidence or as a result of it, which determine the unconstitutionality of their origin; nor do they imply that they are the result of the original irregularity, since both tests are independent and there is no causal connection between the original illegality (diligence without procedural forms) and the evidence whose obtaining is intended to be related to that offense (subsequent diligence of recognition and declaration of the victims), since they relieved themselves by exercising the right of adequate defense and observing the formalities of due process; Hypothesis in which the court, attentive to the principle of contradiction, must confront them with the rest of the charge material, in order to safeguard the right of the defendant to weigh them with the discharge.

Article 280. Recognition of the object.

Before the recognition of an object, whoever performs the diligence must proceed to its description. Immediately afterwards, the object or its registration will be presented to carry out the recognition.

Explanation: In terms of litigation techniques, the way to incorporate an object into a hearing or trial and later use it to continue presenting the testimony is precisely under the rules indicated in this article.

That is why the witness must first describe the characteristics of the object, with this he can make the court see that he knows the object by having previously perceived it, describe its characteristics, color, size, among others.

And finally, the object will be shown to the person for the purpose of affirming if it is the same object that is related to the facts, he will explain why he recognizes it, and from that moment the object will be admitted to the audience. or trial in order for the witness to continue developing his testimony.

Article 281. Other recognitions.

When voices, sounds and anything that may be the object of sensory perception must be recognized, the provisions set forth for the recognition of people shall be observed, as applicable.

Article 282. Request for a search warrant.

When in the investigation the Public Prosecutor deems it necessary to carry out a search, because the place to be inspected is a home or private property, it will request by any means the judicial authorization to carry out the corresponding act of investigation. The request, which will have a record, will state the place to be inspected, the person or persons to be apprehended and the objects sought, indicating the reasons and indications that support the need for the order, as well as the public servants who may practice or intervene in said act of investigation.

If the place to be inspected is publicly accessible and is part of the private residence, the latter will not be subject to a search, unless it has been so ordered.

Article 283. Resolution ordering the search.

The judicial decision ordering the search must contain at least:

I. The name and position of the Control Judge who authorizes it and the identification of the process in which it is ordered;

II. The concrete determination of the place or places that will have to be searched and what is expected to be found in them;

III. The reason for the search, having to indicate or express the indications from which the possibility of finding in the place the person or persons who have to apprehend or the objects that are sought;

IV. The day and time on which the search must be carried out or the determination that, if it is not carried out within the three days following its authorization, will be without effect when the exact date of completion is not specified, and

V. Public servants authorized to practice and intervene in the search. The search warrant request must be resolved by the judicial authority immediately by any means that guarantees its authenticity, or in a private hearing with the sole appearance of the Public Prosecutor, within a period not exceeding six hours after it was filed. has received. If the resolution is issued or registered by means other than writing, the operative points of the search warrant must be transcribed and delivered to the Public Ministry.

Article 284. Refusal of the search.

In the event that the Control Judge denies the order, the Public Ministry may correct the deficiencies and request the order again or may appeal the decision. In this case, the appeal must be resolved within a period of no more than twelve hours from the date it is filed.

Article 285. Surveillance measures.

Even before the competent control judge issues the search warrant, the Public Prosecutor's Office may order surveillance measures or any other that does not require judicial control, which it deems appropriate to prevent the escape of the accused or the abduction, alteration, concealment or destruction of documents or things that constitute the object of the search.

Article 286. Search in residence or public offices.

For the practice of a search at the residence or office of any of the Executive, Legislative or Judicial Branches of the three orders of government or, where appropriate,

autonomous constitutional bodies, the Police or the Public Ministry will obtain the corresponding authorization in the terms provided in this Code.

Article 287. Search in ships, boats, aircraft or any means of foreign transportation in Mexican territory.

When a search has to be carried out on ships, boats, aircraft or any foreign means of transport in Mexican territory, the provisions set forth in the Treaties, applicable laws and regulations will also be observed.

Article 288. Search formalities.

A copy of the operative points of the search warrant will be delivered to whoever lives or is in possession of the place where it is carried out, or when he is absent, to his manager and, in his absence, to any person of legal age who is found. in the place.

When no person is found, a copy of the operative points authorizing the search will be posted at the entrance of the property, and must be recorded in the minutes and use of public force will be made to enter.

At the end of the search, a circumstantial record will be drawn up in the presence of two witnesses proposed by the occupant of the searched place, or in their absence or refusal, by the authority that performs the search, but the designation may not fall on the elements that belong to the authority who practiced it, unless they have not participated in it. When these requirements are not met, the elements found in the search will lack any probative value, without the consent of the occupants of the place serving as an excuse.

At the end of the search, care will be taken to ensure that the places are closed, and if this is not possible immediately, it will be ensured that other people do not enter the place until the closure is achieved.

If the presence of a person other than the public servants proposed for it is necessary for the search, the Public Ministry must include their data as well as the corresponding motivation in the request for the act of investigation.

In case the presence of individuals is authorized in the search, they must omit any material intervention in it and may only have communication with the public servant who directs the practice of the search.

Article 289. Discovery of a diverse crime.

If a search results in the discovery of a crime other than the one that motivated it, an inventory will be made of what is collected related to the new crime, observing in this case what is related to the chain of custody and this circumstance will be recorded. in the registry to initiate a new investigation.

Article 290. Entry of an authority to a place without judicial authorization.

Entering a closed place without a court order will be justified when:

It is necessary to repel a real, current or imminent aggression and without law that puts the life, integrity or personal liberty of one or more people at risk, or

II. It is done with the consent of whoever is empowered to grant it. In the cases of section II, the authority that practices the entry must report within the following five days, before the jurisdictional body. Said hearing must be attended by the person who gave their consent for the purpose of ratifying it. The reasons that led to the inspection without a warrant are detailed in the minutes drawn up for that purpose.

Article 291. Intervention of private communications.

When in the investigation the Public Ministry considers the intervention of private communications necessary, the Head of the Attorney General of the Republic, or to whom he delegates this power, as well as the Attorneys of the federal entities, may request the competent federal control judge , by any means, the authorization to perform the intervention, expressing the purpose and need for it.

The intervention of private communications, covers all communication systems, or programs that are the result of technological evolution, that allow the exchange of data, information, audio, video, messages, as well as electronic files that record, preserve the content of the conversations or record data that identifies the communication, which can be presented in real time.

The request must be resolved by the judicial authority immediately, by any means that guarantees its authenticity, or in a private hearing with the sole appearance of the Public Ministry, within a period not exceeding six hours after receiving it. Judicial authorization will also be required in cases of information extraction, which consists of obtaining private communications, communication identification data; as well as the information, documents, text, audio, image or video files contained in any device, accessory, electronic device, computer equipment, storage device and anything that may contain information, including that stored on platforms or data centers remotes linked to them.

If the resolution is registered by means other than writing, the operative points of the authorization must be transcribed and delivered to the Public Ministry. The public servants authorized to execute the measure will be responsible for it being carried out under the terms of the judicial resolution.

Explanation: The only way to be able to intervene in communications is by going to the federal judge to request authorization for the purpose of being able to intervene in any communication, where it must be clear which communication is intended to be intervened, what is it that is intended to be found and why. you want to do.

Article 16 of the Constitution is the one that protects the freedom and inviolability of communications.

Communications intervention is regularly requested for the purpose of intercepting telephone calls, although it may also be that the telecommunications company is requested to provide information about the calls that were made by the person intervened and the place where they were made, the call " call sheet". On the other hand they can be delivered as well.

It is important to remember that if one of the parties owns an object that stores the communication that wishes to be intervened, for example the victim, and the latter voluntarily delivers it to the public prosecutor, there is no longer any need to request judicial intervention, since that one of the parties involved in the communication revealed the information, which is legal.

These judicial criteria will help to better interpret this article:

**SECURATION OF MOBILE PHONE AND ITS MICROCHIP DECREED IN AN INVESTIGATION FOLDER. IF THE CLAIM IS INDIRECT, AND IT IS NOTICED THAT THERE IS NO JUDICIAL AUTHORIZATION TO INTERVENE THE PRIVATE COMMUNICATIONS WHICH, IF APPLICABLE, ARE CONTAINED IN THOSE DEVICES, THE FINAL SUSPENSION SHALL BE GRANTED SO THAT THEY ARE NOT REMOVED, DELIVERED OR DISCLOSURED, REGARDLESS OF WHETHER SAID FOLDER IS IN JUDICIAL.*Article 16 of the Political Constitution of the United Mexican States imposes as a limit for the inviolability of private communications, their intervention, prior exclusive authorization by the federal judicial authority, at the request of that authorized by law or the head of the Ministry Public of the corresponding federal entity, without distinguishing whether they are persons subject to investigation, so that in application of the principle of law that states "where the law does not distinguish, there is no reason to distinguish", there is no valid argument to restrict fundamental rights to any person, for the mere fact of being detained. In this sense, if at the time of the arrest it is noticed that she is carrying a cell phone with her, she is empowered to decree the seizure of that object and request the Judge to intervene in private communications, as described in the aforementioned constitutional precept; so that if this activity is carried out without the existence of judicial authorization, any evidence that is extracted, or that which derives from it, will be considered illegal and will have no value. In another aspect, in accordance with the rules established in article 147 of the Amparo Law, it is possible to grant the suspension, even to the degree of provisionally restoring the plaintiff to the enjoyment of the violated right while the sentence is pronounced in the main notebook. Consequently, if the seizure of a mobile phone and its decreed microchip in an investigation folder is claimed, without the records noting that there is judicial authorization to intervene in private communications that, if applicable, are contained in those devices, notwithstanding Since the investigation folder is judicialized, the definitive suspension must be granted so that the information contained in the telephone equipment and in the microchip is not extracted or delivered by any means, nor*

disclosed, until the responsible authority receives the notification of the enforceable sentence issued in the main notebook from which the incident derives; on the understanding that, if these acts of extraction, delivery by any means or disclosure of the information have been carried out, said actions must be left without effect, not be given any probative value and the effects of the suspension granted must be rolled back. The foregoing is intended to promote, from the judicial work of amparo, a culture of respect for fundamental rights in accordance with article 1, third paragraph, of the Federal Constitution, which must prevail both in amparo proceedings and in the incident of suspension, in order to avoid, as far as possible, abuses, excesses or conflicts that may eventually arise in the relations of the governed with the authorities, in each specific situation that comes to the attention of the protection bodies in which exposed terms.

INVIOLABILITY OF PRIVATE COMMUNICATIONS. THE EVIDENCE THAT IS EXTRACTED FROM A MOBILE PHONE AND ITS MICROCHIP OR THAT DERIVED FROM IT, SHOULD BE CONSIDERED ILLICIT AND CANNOT BE TAKEN INTO ACCOUNT AGAINST THE DETAINEE WHEN DESPITE THE INVESTIGATION FOLDER BEING JUDGED, THERE IS NO AUTHORIZATION JUDICIAL.The Public Prosecutor's Office is responsible for conducting and commanding the investigation of crimes and among its obligations are: (i) to ensure that all investigations strictly comply with the human rights recognized in the Political Constitution of the United Mexican States and in the international treaties to which the Mexican State is a Party; (ii) request the court to authorize investigation acts and other actions that are necessary within it; (iii) order or supervise, as the case may be, the application and execution of the necessary measures to prevent the evidence from being lost, destroyed or altered, once it becomes aware of them; (iv) make sure that the rules and protocols for its preservation and processing have been followed; (v) initiate the corresponding investigation when appropriate and, where appropriate, order the collection of evidence and means of proof that must be used for their respective resolutions and those of the court; (vi) collect the necessary elements to determine the damage caused by the crime and its quantification, for the purposes of its reparation; and, (vii) act in strict adherence to the principles of legality, objectivity, efficiency, professionalism, honesty and respect for human rights recognized in the Constitution. In another aspect, in accordance with the criteria of the First Chamber of the Supreme Court of Justice of the Nation established in jurisprudence 1a./J. 115/2012 (10a.), title and subtitle: "RIGHT TO THE INVIOLABILITY OF PRIVATE COMMUNICATIONS. ITS SCOPE OF PROTECTION EXTENDES TO DATA STORED ON THE SECURED MOBILE PHONE OF A PERSON ARRESTED AND SUBJECT TO INVESTIGATION FOR THE POSSIBLE COMMISSION OF A CRIME.", in the case of private communications, all existing forms of communication and those that are the result of technological evolution must be protected by the fundamental right to their inviolability; hence, if in accordance with articles1o. of the Federal Constitution, and1, numeral 1 and 63, numeral 1, of the American Convention on Human Rights, all authorities are obliged to comply with the constitutional and conventional mandate of respect and guarantee of human rights, the Public Ministry must request a judicial order, in the terms described in article16 constitutional, to extract the information (images,

videos, records of text messages, voice messages, calls made and received, emails, etc.) contained in an insured telephone equipment and microchip, despite the fact that the folder of investigation, because this information is classified as private and is protected by the right to the inviolability of private communications, including those detained and subject to investigation for the possible commission of a crime and, therefore, if that search activity and obtaining information is carried out without the corresponding judicial authorization, the fundamental right of legality is violated. Thus, any test data that is extracted from these devices without judicial authorization, or those derived from them, must be considered illegal and may not be taken into account to the detriment of the detainee.

Article 292. Application requirements.

The request for intervention must be founded and motivated, specify the person or persons who will be subject to the measure; the identification of the place or places where it will be carried out, if possible; the type of communication to be intervened; its duration; the process that will be carried out and the lines, numbers or devices that will be intervened, and, where appropriate, the name of the concessionary company of the telecommunications service through which the communication object of the intervention is carried out.

The term of the intervention, including its extensions, may not exceed six months. After said period, new interventions may only be authorized when the Public Ministry proves new elements that justify it.

Explanation: This article is addressed to the public ministry, since it indicates the requirements that must be met when requesting the judicial body to intervene in the communication. It is essential to clearly establish each of the points indicated in the article.

Article 293. Content of the judicial resolution that authorizes the intervention of private communications.

In the authorization, the Control Judge will determine the characteristics of the intervention, its modalities, limits and, where appropriate, will order public or private institutions specific modes of collaboration.

Explanation: like any judicial resolution, the judge must at all times detail in detail the type of intervention and how the private communication will be intervened, as well as the ways in which it will be carried out. At all times, the telephone concessionaires have the obligation to provide the resources that are within their reach in order to be able to intervene in communications.

Article 294. Object of the intervention.

Private communications that are made orally, in writing, by signs, signals or through the use of electrical, electronic, mechanical, wired or wireless devices, computer systems or

equipment, as well as by any other means or form may be subject to intervention. that allows communication between one or more transmitters and one or more receivers.

In no case may interventions be authorized when dealing with matters of an electoral, fiscal, commercial, civil, labor or administrative nature, nor in the case of communications between the detainee and his defender.

The Judge may at any time verify that the interventions are carried out in the authorized terms and, in case of non-compliance, decree their partial or total revocation.

Explanation: Communications broadly includes any way of establishing a dialogue with a third party, which is why this article establishes that all forms of communication that must be understood as communication must be clearly maintained.

An express prohibition is established in relation to certain areas of the law where communications may not be intervened. In the event that the public prosecutor fails to comply with or exceeds the effects of the communications, the judge may revoke all or part of the issued order.

Article 295. Cognizance of Miscellaneous Offense.

If, in the practice of an intervention of private communications, knowledge of the commission of a crime other than those that motivate the measure becomes known, this circumstance will be recorded in the registry to start a new investigation.

Article 296. Extension of the intervention to other subjects.

When from the intervention of private communications the need to extend the intervention to other subjects or places is noticed, the competent Public Ministry will present the respective request to the control Judge himself.

Article 297. Registration of interventions.

The interventions of communication must be registered by any means that does not alter the fidelity, authenticity and content of the same, by the Police or by the expert that intervenes, so that it can be offered as a means of proof in the terms indicated. this Code.

Article 298. Registration.

The registry referred to in the previous article will contain the start and end dates of the intervention, a detailed inventory of the documents, objects and the means for the reproduction of sounds or images captured during it, when it does not put at risk the investigation or the person, the identification of those who have participated in the investigation acts, as well as the other data considered relevant for the investigation. The original and duplicate records, as well as the documents that comprise them, are numbered progressively and will contain the necessary data for their identification.

Article 299. Conclusion of the intervention.

At the conclusion of the intervention, the Police or the expert, immediately, will inform the Public Ministry about its development, as well as its results and will draw up the respective record. In turn, with the same promptness, the Public Ministry that has requested the intervention or its extension will inform the control judge.

The interventions carried out without the aforementioned authorizations or outside the terms ordered therein, will lack probative value, without prejudice to the administrative or criminal responsibility that may arise.

Article 300. Destruction of records.

The Jurisdictional Body will order the destruction of those records of the intervention of private communications that are not related to the crimes investigated or to other crimes that have warranted the opening of a different investigation, unless the defense requests that they be preserved as they are considered useful for their work. .

Likewise, it will order the destruction of the records of unauthorized interventions or when these exceed the terms of the respective judicial authorization.

The records will be destroyed when the final file, dismissal or acquittal of the accused is decreed. When the Public Ministry decides to temporarily archive the investigation, the records may be kept until the crime expires.

Article 301. Collaboration with the authority.

Concessionaires, permit holders and other owners of the means or systems susceptible to intervention, must collaborate efficiently with the competent authority to carry out said investigative acts, in accordance with the applicable provisions. Likewise, they must have the essential technical capacity to meet the requirements required by the judicial authority to operate an order to intercept private communications.

Failure to comply with this mandate will be sanctioned in accordance with the applicable penal provisions.

Explanation: Concessionaires (such as AT and T) must first collaborate with the judicial and ministerial authorities, providing all the information requested for the purpose of cooperating with the clarification of the facts.

It is common for the investigating authorities to request information such as the so-called call sheet (information that indicates which antenna the person investigated for a crime connected to when making a telephone call at a specific time), or the owner of a telephone line, among others.

In addition, the concessionaires must have the adequate infrastructure to be able to provide these services and support these collaborations, so if they do not have

it or do not comply with the mandates of the authorities, they could even incur crimes for these actions.

Article 302. Duty of secrecy.

Those who participate in any intervention of private communications must observe the duty of secrecy regarding their content.

Explanation: The duty of secrecy extends to the parties to the process (public prosecutor, defense, judge), as well as to the concessionaires of the same (AT and T), for which they are obliged not to disclose the information to which they have had access to third parties outside the process, to public opinion, among others.

Violation of this principle could make this information illegal and lose its effectiveness when seeking to prove the facts investigated.

Article 303. Geographical location in real time and request for delivery of preserved data.

When the Public Prosecutor considers necessary the geographic location in real time or delivery of data kept by the telecommunications concessionaires, the authorized ones or service providers of applications and contents of the mobile communication equipment associated with a line that is related to the facts that are being investigated, the Prosecutor, or the public servant to whom the power is delegated, may request the control Judge of the corresponding jurisdiction, in his case, by any means, request the telecommunications concessionaires, the authorized ones or application service providers and contents, so that they provide the investigative authority with the necessary opportunity and sufficiency, the information requested for the immediate performance of said investigative acts. The stored data referred to in this paragraph will be destroyed if they do not constitute a suitable or pertinent means of proof.

The request will state the mobile communication equipment related to the facts under investigation, indicating the reasons and indications that support the need for geographic location in real time or the delivery of the stored data, its duration and, where appropriate, The name of the authorized company or provider of the telecommunications service through which the lines, numbers or devices that will be subject to the measure are operated.

The petition must be resolved by the judicial authority immediately by any means that guarantees its authenticity, or in a private hearing with the sole appearance of the Public Ministry. If the resolution is issued or registered by means other than writing, the operative points of the order must be transcribed and delivered to the Public Ministry.

In the event that the Control Judge denies the order of geographic location in real time or the delivery of the preserved data, the Public Ministry may correct the deficiencies and request the order again or may appeal the decision. In this case, the appeal must be resolved within a period of no more than twelve hours from the date it is filed.

Exceptionally, when the physical integrity or life of a person is in danger or the object of the crime is at risk, as well as in events related to the illegal deprivation of liberty, kidnapping, extortion or organized crime, the Prosecutor, or the public servant to whom the power is delegated, under his strictest responsibility, will directly order the geographic location in real time or the delivery of the data preserved to the telecommunications concessionaires, the authorized ones or providers of applications and content services, who must attend to it immediately and with the necessary sufficiency. As soon as the requirement has been completed, the Public Prosecutor's Office must inform the competent control judge by any means that guarantees its authenticity, within a period of forty-eight hours, in order to immediately ratify partially or totally the subsistence of the measure, without prejudice to the fact that the Public Prosecutor's Office continues with its action.

When the Control Judge does not ratify the measure referred to in the preceding paragraph, the information obtained may not be incorporated into the criminal procedure.

Likewise, the Prosecutor, or the public servant to whom the power is delegated, may require the obligated subjects established by the Federal Telecommunications and Broadcasting Law, the immediate conservation of data contained in networks, systems or computer equipment, up to a maximum time. ninety days, which must be done immediately. The request and delivery of the data contained in networks, systems or computer equipment will be carried out in accordance with the provisions of this article. The foregoing without prejudice to the obligations established in terms of conservation of information for concessionaires and authorized telecommunications in terms of article 190, section II of the Federal Law on Telecommunications and Broadcasting.

Explanation: Geographic location in real time practically means interfering with the mobile phone or any communication device for the purpose of locating where it is, with the coordinates and other location data of mobile devices.

The delivery of data stored in phones, applications and others means delivering the information that a communications or application provider has, such as the owner of a telephone line or a company such as Google, in the case of a communications provider, calls made from this telephone number, and in the case of applications such as WhatsApp, the delivery of the conversations carried out there (it is worth mentioning that even if they are deleted, they remain registered in the company's storage devices).

However, for didactic purposes, this article regulates the following:

1. ***The prosecutor of the public ministry may request the judge to intervene in the communications indicated above.***

2. ***The prosecutor may only use the information that is necessary to investigate the crimes in question.***

3. ***In the event that additional information has been obtained to that which has to do with the crime, for example, that a request has been made to analyze a***

cell phone to extract whatsapp conversations, but when extracting these conversations, additional information such as It could be conversations between the defendant and his girlfriend of a personal or sexual nature, in this case this information must be destroyed as it does not constitute necessary information to clarify the facts investigated, and on the other hand, guarantee the right to privacy of communications between the parts.

In the request made by the public prosecutor to the judge, it must be clearly established which communication equipment is going to intervene, and why the need to do so, justifying with the judge if there is a WhatsApp conversation, an audio or a message on that cell phone. video that serves to clarify the facts, using these examples for practical purposes.

Exceptionally, the attorney general or the public servant that he designates may directly request the telecommunications provider (AT and T, google, facebook) to send the stored data which they have in their possession, this cause of exception will be given when the life of the victim or someone related to the facts investigated is in danger, as well as acts of organized crime, extortion or kidnapping, obviously given the need for immediate action by the prosecution to avoid irreversible damage such as loss of life of the victim or someone related to the facts.

After the previous activity has been carried out, the prosecutor must inform the judge how he carried out this request and the information he received from the telecommunications providers, in order to ratify all or part of the information that was received and with This is to decide what is appropriate according to the law, so that if the judge did not give his approval due to the information that was requested and obtained without his prior permission, this information cannot be used to effects of incorporating into criminal proceedings.

This judicial criterion will help to better interpret this article:

MINISTERIAL REQUEST FOR DELIVERY OF DATA KEPT BY TELECOMMUNICATIONS CONCESSIONARIES. ITS AUTHORIZATION IS EXCLUSIVE COMPETENCE OF THE JUDICIAL BRANCH OF THE FEDERATION (INTERPRETATION IN ACCORDANCE WITH ARTICLE 303 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES)Article16, twelfth and thirteenth paragraphs, of the Political Constitution of the United Mexican States, recognizes the human right to the inviolability of private communications and establishes that the authorization for its intervention is the exclusive competence of the federal judicial authority. In this regard, the Chambers of the Supreme Court of Justice of the Nation, in the isolated theses 1a. CLV/2011, heading: "RIGHT TO THE INVIOLABILITY OF PRIVATE COMMUNICATIONS. ITS OBJECT OF PROTECTION INCLUDES THE DATA THAT IDENTIFY THE COMMUNICATION." and 2nd. XXXV/2016 (10th.), title and subtitle: "PRIVATE COMMUNICATIONS. THE REQUEST FOR ACCESS TO THE TRAFFIC DATA RETAINED BY THE CONCESSIONARIES, REFERRED TO IN ARTICLE 190, SECTION II, OF THE FEDERAL LAW ON TELECOMMUNICATIONS AND BROADCASTING, MUST BE MADE IN TERMS OF

ARTICLE 16 OF THE CONSTITUTION AND ONLY THE JUDICIAL AUTHORITY MAY AUTHORIZE THE DELIVERY OF THE INFORMATION PROTECTED.", established that this human right does not only refer to the communication process, but also protects the data that accounts for the numbers and/or cellular devices, the owners of the lines and the records of calls made, known as "communications traffic data", therefore it is concluded that the delivery of data kept by telecommunications concessionaires, referred to in article303 of the National Code of Criminal Procedures, is an act of investigation that invades the scope of protection of private communications. Consequently, in accordance with the principle of interpretation of the law in accordance with the Federal Constitution, when the invoked numeral 303 establishes that the delivery of this type of data may be requested "from the Control Judge of the corresponding jurisdiction", it must be understood in the sense that the authorization for the delivery of data falls within the scope of exclusive jurisdiction of the federal judicial authority, to which the Constitution recognizes the power to authorize measures that affect the mentioned human right.

COMPETENCE TO KNOW THE REQUEST MADE BY THE PUBLIC PROSECUTOR'S OFFICE OF A FEDERAL ENTITY, RELATING TO THE AUTHORIZATION TO OBTAIN DATA PRESERVED FROM TELEPHONE RECORDS. IT CORRESPONDES TO THE CONTROL JUDGE OF THE FEDERAL JURISDICTION (INTERPRETATION OF ARTICLE 303 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES).If the data kept on the requested telephone line is immersed in the protection of private communications established in article16 of the Political Constitution of the United Mexican States, it corresponds to know the request made by the Public Ministry of a federative entity, to a Judge of control of the federal jurisdiction, since the fact that the article303 of the National Code of Criminal Procedures, establishes that the data request must be made before the "control court of the corresponding jurisdiction", does not represent any obstacle to determine before which authority this request should be presented, since once a strict interpretation of said normative portion has been made, it does not establish that the the corresponding jurisdiction is the one to which the agent of the Public Ministry belongs, but on the contrary, which must be made to the Control Judge of the corresponding jurisdiction, which, in accordance with articles 16 of the Constitution,291 of the indicated code and190 of the Federal Telecommunications and Broadcasting Lawcorresponds to the Control Judge, member of the Judicial Power of the Federation. Interpreting the contrary would lead to giving article 303 a scope contrary to the provisions of the various referred numerals, granting powers to the control Judges of the federative entities, which are only reserved to the bodies of the Federal Judiciary.

COMPETENCE TO KNOW THE RATIFICATION OF THE INVESTIGATION TECHNIQUE RELATING TO THE GEOGRAPHICAL LOCATION IN REAL TIME OF MOBILE COMMUNICATION EQUIPMENT ASSOCIATED WITH TELEPHONE LINES, ORDERED BY THE PUBLIC MINISTRY, IN TERMS OF ARTICLE 303, SEVENTH PARAGRAPH, OF THE NATIONAL PROCEDURAL PROCEDURAL CODE . IT CORRESPONDES TO THE CONTROL JUDGE OF THE SUBJECT AND

TERRITORIAL CIRCUMSCRIPTIONS IN WHICH THE INVESTIGATED EVENTS OCCURRED.Article16, fourteenth paragraph, of the Political Constitution of the United Mexican States authorizes the Control Judges of the Judiciary (of the Federation and of the federal entities), to resolve by any means, among others, the investigative techniques of the authority that require judicial control, with the precision that the authorized interventions (in general, any of them) will comply with the legal requirements and limits. Thus, according to the articles20 and 303, seventh paragraph, of the National Code of Criminal Procedure, when investigative acts are related in which the physical integrity or life of a person is in danger, or the object of the crime is at risk, as well as in acts related to the illegal deprivation of liberty, kidnapping, extortion or organized crime, the prosecutor or public servant to whom this power is delegated, under his strictest responsibility, will directly order the geographic location in real time of mobile communication equipment associated with telephone lines and, from its compliance, within the term After forty-eight hours, the Public Prosecutor's Office must inform the control judge to guarantee its authenticity, in order to immediately ratify partially or totally the subsistence of the measure, without prejudice to the social representative continuing with his actions. Therefore, in accordance with the punishable acts, the competence to hear the ratification of this investigative technique corresponds to the Judge of control of the matter and territorial circumscription in which those acts occurred, that is, to the respective federal or local court. within the scope of its jurisdiction.

CHAPTER III: EARLY TRIAL

Article 304. Early test.

Until before the trial hearing is held, any pertinent means of evidence may be released in advance, provided that the following requirements are met:

I. That it be practiced before the Control Judge

II. That it be requested by one of the parties, who must express the reasons why the act must be carried out in advance of the trial hearing to which it is intended to vent and it becomes essential by virtue of the fact that it is considered probable that a witness will not You will be able to attend the trial hearing, because you live abroad, because there are reasons that make you fear your death, or because of your state of health or physical or mental disability that prevents you from testifying;

III. That it be for well-founded reasons and of extreme necessity and to avoid the loss or alteration of the evidence, and

IV. That it be practiced at the hearing and in compliance with the rules established for the practice of evidence in the trial.

Explanation: The relief of early evidence is a form of relief exceptional to the general rule where evidently the means of evidence must appear at the trial hearing, which will be given for the following reasons generally

a) In the case of witnesses: It is very likely that a witness has, for example, a diagnosed terminal illness and the health provider estimates a life time for the witness of 4 months.

Under this assumption, the provider of the evidence must carry out an analysis of the times that the process will last, where in case of reaching the conclusion that the means of evidence, that is, the person who must go to trial to render his testimony, probably lose his life for those moments, is that in that context he must request the hearing so that the anticipated evidence is unburdened.

b) In the case of the experts: The same assumptions occur as in the case of the witnesses, however in this case it is also important to refer to what is established in section III of this article, since when the expert goes to Giving his testimony may necessarily have to rely on some indication that he used for the purpose of better explaining his conclusions, either because it is about some chemical element that is consumed, or some other circumstance of this type.

Under any circumstance, whoever requests the hearing must justify the extreme need for the means of proof to be unburdened before trial, where the control judge after debate between the parties must decide on the admissibility or not of the exceptional measure.

It is important to remember that in the event of approval of the advance evidence, it will be governed by the rules of the trial, that is, the offeror will question, the counterparty will cross-examine, and so on, respecting the litigation techniques, so that the same go through the immediacy and corresponding contradiction and this in turn can be valued in oral proceedings as if it had been.

Article 305. Procedure for early testing.

The request for relief of early evidence may be raised from the time the complaint, complaint or equivalent is filed and until before the oral trial hearing begins.

When the relief of a test is requested in advance, the Court will summon to a hearing all those who have the right to attend the hearing of oral trial and after listening to them will assess the possibility that the test to anticipate cannot be released in advance. the oral trial hearing, without serious risk of loss due to the delay and, where appropriate, will admit and present the evidence in the same act, granting the parties all the powers provided for their participation in the oral trial hearing.

The defendant who is detained will be transferred to the courtroom to impose himself personally, by teleconference or any other means of communication, of the practice of diligence.

In the event that there is still no identified defendant, a Public Defender will be appointed to intervene in the hearing.

Explanation: The particularity that exists in the procedure to request early evidence is that it can be requested from the time the complaint or complaint is filed.

And it is that although the matter is not prosecuted, or in other words, the judge is informed of its existence, a situation may arise where it is of the utmost importance to immediately vent a witness, due to their situation of health, or even their mental situation, situations in which this special measure can be used immediately.

Article 306. Registration and conservation of the anticipated test.

The hearing in which the anticipated evidence is released must be registered in its entirety. Once the preliminary evidence has been completed, the corresponding record will be delivered to the parties.

If the obstacle that gave rise to the practice of the advance evidence did not exist by the date of the trial hearing, the corresponding means of evidence will be released again in the same.

All anticipated evidence must be kept in accordance with the measures provided by the Control Judge.

Explanation: The early test will be carried out through a hearing similar to any other, where the witness will be questioned and cross-examined, all of which will be videotaped.

It may be the case in which, for example, a person diagnosed with a terminal illness, for example cancer, has testified through the figure of anticipated evidence, obviously due to the lack of certainty that he would be alive by the time he died. the judgment has to be released.

In the event that due to a medical error in the diagnosis, or any cause, the cancer has disappeared, this in turn means that you can go to trial, which is why in a case of this type, the anticipated test will no longer have a reason to be and the person will have to go to present their testimony in court.

TITLE VI: INITIAL HEARING

Article 307. Initial hearing.

In the initial hearing, the defendant will be informed of his constitutional and legal rights, if he had not been previously informed of them, the legality control of the detention will be carried out, if applicable, the accusation will be formulated, the opportunity to testify will be given to the accused, the requests for linking to the process and precautionary measures will be resolved and the term for the closure of the investigation will be defined.

In the event that the Public Ministry or the victim or offended party requests the origin of a precautionary measure, said matter must be resolved before the suspension of the initial hearing is issued.

The Public Prosecutor's Office, the accused and his Defender must attend this hearing. The victim or offended party or their legal adviser may attend if they wish, but their presence will not be a requirement for the validity of the hearing.

Explanation: The initial hearing will be the first time that the person who is being pointed out by the prosecution as responsible for a crime for the purpose of appearing before the court to formalize the criminal process.

Let us remember that the initial hearing is not necessarily the first hearing that is held within the ordinary criminal procedure, since a hearing may have previously been held to request an arrest warrant or some action in the investigation that requires prior authorization from the control judge in accordance with what established in numeral 252 of the adjective coding.

As a cause of exception, a hearing could be held prior to the initial one where the defendant was present, which is the case in which the prosecution keeps a defendant in custody for an alleged crime and seeks to obtain a sample of the body. of the accused and he did not give his consent for it, in this exceptionality, judicial assistance would have to be requested from the control judge for the latter to issue the order to obtain the sample that is sought for the purposes of carrying out the ministerial investigation.

This judicial criterion will help to better interpret this article:

INITIAL HEARING. IN THIS DILIGENCE AND IN ITS CONTINUATION, THE PRESENCE OF THE IMPUTED IS A REQUIREMENT OF VALIDITY, IN TERMS OF ARTICLE 307 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES.The last paragraph of the aforementioned precept establishes that the Public Prosecutor's Office, the defendant and his defense attorney must attend the initial hearing, and the victim or offended party or their legal adviser may attend, if they wish, but their presence will not be a requirement of validity; likewise, the various article315 of the National Code of Criminal Procedures indicates that in the continuation of the initial hearing, after the evidence, if any, will be granted the floor, first, to the Public Ministry, to the legal adviser of the victim and then to the accused. Therefore, the

presence of the latter at the initial hearing and its continuation is mandatory, as it is a requirement of validity, in terms of article307 indicated, because without the presence of the defendant, the proceedings in this phase will be null.

Article 308. Control of the legality of the detention.

Immediately after the defendant arrested in instant crime or in an urgent case is made available to the control Judge, the initial hearing will be summoned in which the control of the detention will be carried out before proceeding to the formulation of the accusation. The Judge will ask the detainee if he has a Defender and if not, he will order that a Public Defender be appointed and will let him know that he has the right to offer evidence, as well as access to the records.

The Public Prosecutor's Office must justify the reasons for the detention and the control judge will proceed to classify it, examine compliance with the constitutional retention period and the procedural requirements, ratifying in case it is found to be in accordance with the law or decreeing the release in the terms provided in this Code.

Once the arrest in instant crime has been ratified, in an urgent case, and when an arrest warrant has been executed, the defendant will remain in detention during the development of the initial hearing, until it is decided whether or not he will be subjected to a precautionary measure.

In the event that at the beginning of the hearing the agent of the Public Ministry is not present, the Control Judge will declare the hearing in recess for up to one hour and will order the administration of the Judiciary to communicate with the hierarchical superior of that one, with the purpose of making him appear or replace him. Once the recess has concluded without obtaining a response, the detainee will be immediately released.

The omission of the Public Ministry or its hierarchical superior, to the preceding paragraph will make them incur the responsibilities in accordance with the applicable provisions.

Explanation: It is important to point out that the hearing to ratify the legality of the detention previously qualified by the social representation has the sole purpose of allowing the judge to verify if the assessment previously made by the public prosecutor complies with the legal parameters established in article 146 of this same encoding.

The social representation is not obliged to request the aforementioned hearing to ratify the detention, we understand that this is only a way of leading the accused to process. If the case that the detention was not in accordance with the law is updated, it is that the prosecutor's office, respecting the legality of the process, must choose to release the detainee.

Another of the assumptions that may occur is that the maximum period that the public prosecutor can detain the detained person, which in this case is 48 hours, is that based on the principle and duty of objectivity that must be observed, the

decision is made. to release the accused, without prejudice to the fact that the accused may later be brought to trial, either by summons or arrest warrant.

The control of the detention will begin with the presentation of the prosecutor on the circumstances in which the detention occurred, it is important to establish that the purpose of this is precisely to verify if the circumstances of the detention conform to the legality of numeral 146 of this code, not Debate will be opened on substantive issues, such as whether the detained person committed the crime or whether the person is charged with effectively meeting the elements required by the criminal offense in question.

After the hearing to resolve this point has begun, if the prosecution does not show up after a one-hour recess, the control judge must release the accused. Let us remember that the formalities of the procedure and the legality are embodied in numeral 14 of the Constitution, therefore, by making a decision, the control judge cannot keep the defendant in custody without being charged.

This judicial criterion will help to better interpret this article:

DETENTION IN FLAGRANCE. IT IS UPDATED IF IMMEDIATELY AFTER THE ACTIVE SUBJECT COMMITTED THE CRIMINAL ACT, HE WAS MATERIALLY PERSECUTED WITHOUT ANY INTERRUPTION BY MEANS OF MONITORING THE PUBLIC SECURITY CAMERAS INSTALLED AT THE PLACE OF THE EVENT (APPLICABLE LEGISLATION FOR MEXICO CITY).Article 267, first paragraph, of the Code of Criminal Procedures for the Federal District, applicable to Mexico City, establishes that a flagrante delicto exists when the person is arrested at the time of committing it, or when the accused is persecuted materially and immediately after the crime has been committed. Now, if the arrest of the active subject was carried out immediately after he committed the criminal act -reasonable period-, due to the tracking that was given through the monitoring of the public security cameras installed in the place of the event, giving him persecution material to said person by that means from there, to where they can be captured, without any interruption, this circumstance updates the figure of flagrante delicto, because although the aggressor was not physically followed, but through said electronic system, for true, immediately after the event occurred and without losing sight of it, even observing detail by detail what he did on that journey; The truth is that, as this situation is in accordance with the provisions of the fifth paragraph of article 16 of the Political Constitution of the United Mexican States, in accordance with the indicated article 267, the detention of the alleged perpetrator did not deviate from the established requirements. in said numerals, to the extent that it was not an arbitrary act or, even worse, unjustified by the arresting police officers; therefore, no right was violated to the detriment of the complainant.

ACCUSATORY CRIMINAL SYSTEM. AGAINST THE DETERMINATIONS AND RESOLUTIONS ISSUED IN APPEALS THAT INCLUDE THE ISSUE OF PERSONALITY, ISSUED WITHIN THE INITIAL HEARING, THE TRIAL FOR INDIRECT AMPARO IS INADMISSIBLE, AS IT DOES NOT CONSTITUTE ACTS OF IMPOSSIBLE

REPARATION. In accordance with the thesis of jurisprudence P./J. 37/2014 (10th), issued by the Plenary of the Supreme Court of Justice of the Nation, title and subtitle: "PERSONALITY. AGAINST THE RESOLUTION THAT DISMISSES THE EXCEPTION OF LACK OF PERSONALITY WITHOUT FURTHER REMEDY, THE INDIRECT AMPARO IS ILLEGAL, RESULTING INAPPLICABLE THE JURISPRUDENCE P./J. 4/2001 (LAW OF AMPARO IN FORCE AS OF APRIL 3, 2013)." , the indirect amparo trial is inadmissible against resolutions that reject the exception of lack of personality, since they do not constitute acts of impossible reparation, since they do not materially affect substantive rights. pointed out that despite emanating from a contradiction of thesis in labor matters, it is binding in all matters.In this context, if in the initial hearing of the accusatory criminal system a determination is issued or an appeal is resolved whose effects affect the issue of personality, the indirect amparo proceeding filed against him is inadmissible, as the case described in the aforementioned jurisprudence thesis is updated, without being an obstacle to the fact that it is based on article 107, section V, of the Amparo Law, which refers to "acts in trial", and that in the case of the initial hearing of the accusatory criminal system, the act claimed derives from a stage that, strictly speaking, is prior to the oral trial, since the expression "trial" in the terms established by the law itself, is used in a broad sense, added to the fact that the aspect of personality will only have intra-procedural effects, which can be repaired if a resolution favorable to the interests of the complainant is obtained.

ARBITRARY DETENTION OR RETENTION OF THE IMPUTED. IRREGULAR PROCEDURES CARRIED OUT BY THE POLICE WITHOUT AUTHORIZATION FROM THE PUBLIC PROSECUTOR'S OFFICE GENERATE THE INVALIDITY OF THE EVIDENCE DERIVED FROM THEM. Irregular proceedings carried out by the police without authorization from the Public Prosecutor's Office invalidate the evidence derived from the arrest or arbitrary retention of the accused. Thus, the police retention of the detainee for their identification or recognition –subsequently sustained as a direct and immediate consequence before the Public Ministry– is not part of the powers conferred on the police, since the constitutional requirement is that these and other investigative tasks be carried out under the control and supervision of the prosecutor as the body in charge of the investigation, as well as in respect and protection of the human rights of the accused to personal liberty, to an adequate defense, to due process and lawful obtaining of evidence. In this sense, this Constitutional Court has upheld the invalidity of the illegal evidence, regardless of its content, which must be linked to its effects derived directly and immediately with the violation in question, in the case, that result from police detention.

Article 309. Opportunity to file charges against detainees.

The formulation of the accusation is the communication that the Public Ministry makes to the accused, in the presence of the control Judge, that it is developing an investigation against him regarding one or more facts that the law indicates as a crime.

In the case of detainees in instant crime or in an urgent case, after the control judge classifies the detention as legal, the Public Prosecutor's Office must formulate the accusation, immediately afterwards it will request the linking of the accused to the process without prejudice to the constitutional term that the accused can invoke. or your Advocate.

In the event that the Public Prosecutor or the victim or offended party or the Legal Adviser requests a precautionary measure and the accused has accepted the constitutional term, the debate on precautionary measures will take place prior to the suspension of the hearing.

The defendant may not refuse to provide his complete identity, having to answer the questions that are addressed to him regarding it and he is urged to conduct himself truthfully.

The defendant will be asked if he wishes to provide his information aloud or if he prefers that these be recorded separately and kept confidential.

If the defendant decides to testify in relation to the facts that are imputed to him, he will be informed of his procedural rights related to this act and that what he declares can be used against him, he was questioned if he has been advised by his Defender and if his decision is free.

If the defendant freely decides to testify, the Public Prosecutor's Office, the legal adviser of the victim or victim, the private accuser in his case and the defense may ask him questions about what he declared, but he will not be obliged to answer those that may be against him.

Where appropriate, the rules provided for in this Code for the relief of the means of proof will be observed.

Explanation: The rules of this article apply when the accused has been served with an arrest warrant or his detention has been decreed legal.

The formulation of the accusation must be formulated by the prosecutor in the second person, speaking directly to the accused and explaining the facts for which he is being investigated.

After the accusation is formulated, the prosecutor's office must immediately request the link to the process to the accused. If the defendant or his defense attorney request, after having filed an accusation, the period of 72 or 144 hours to resolve his relationship to the process, it is that any of the parties, be it the victim or offended party, the victim adviser or the social representative You must request that precautionary measures be discussed in the event that you intend to request to impose them. It is important to maintain that precautionary measures do not necessarily have to be imposed, since they seek precisely to ensure the presence of the accused in the process, guarantee the safety of victims, victims or witnesses, as well as prevent the accused from carrying out actions with the purpose of

hindering the process. process and make the prosecutor's investigative work more difficult, such as destroying or hiding evidence.

Article 310. Opportunity to file charges against people at liberty.

The agent of the Public Prosecutor's Office may formulate the imputation when he deems appropriate the judicial intervention with the purpose of resolving the legal situation of the accused.

If the Public Prosecutor's Office expresses interest in accusing a person who is not in custody, it will request the control judge to summon the person released and indicate a date and time so that the initial hearing can be verified, which will take place within fifteen days following the submission of the application.

When deemed necessary, to achieve the presence of the accused at the initial hearing, the agent of the Public Ministry may request an arrest warrant or a summons, as the case may be, and the control judge will decide what corresponds. Requests and resolutions must be made under the terms of this Code.

Explanation: The procedure in this case for the people who are summoned to formulate imputation is given in the following sense.

The public ministry requested the control judge either through the computer system or by writing deposited with the judiciary request to formulate imputation by appointment, in this case the social representation must include in the formulation the identification data of the accused so that the judicial body can prepare the hearing by making the corresponding notifications.

In the event that the initial hearing has been prepared and the date for its discharge has arrived, the defendant does not appear at it, it will be verified at that moment if the notification was made legally, for which the control judge will give the use of voice for the parties to express what is convenient for their interests.

Article 311. Procedure to formulate the imputation.

Once the defendant is present at the initial hearing, because his appearance has been ordered, because an arrest warrant has been executed against him or the arrest has been ratified, and after the control judge has verified that the accused knows his fundamental rights within the criminal procedure or, where appropriate, after having been made known, the floor will be offered to the agent of the Public Ministry so that he exposes to the accused the fact that is attributed to him, the preliminary legal qualification, the date, place and manner of its commission, the form of intervention that it has had in it, as well as the name of its accuser, unless, in the opinion of the control judge, it is necessary to reserve their identity in the cases authorized by the Constitution and by law.

The Control Judge at the request of the accused or his Defender, may request the clarifications or precisions that he deems necessary regarding the accusation formulated by the Public Ministry.

Explanation: At this point the prosecutor will make a presentation of the criminal act by communicating in the second person to the accused.

It is important to point out that the formulation of the accusation is a procedural act that cannot subsist without the presence of the accused, so if he is not in the courtroom for any reason, it cannot be carried out, since it must to be present and the judge must verify that he has understood each of the facts that are imputed to him, as well as his degree of authorship, participation and, at the discretion of the prosecutor, the subsumption of the fact with the criminal law.

Article 312. Opportunity to declare.

Formulated the imputation, the Control Judge will ask the accused if he understands it and if it is his wish to answer the charge. If you decide to remain silent, it cannot be used against you. If the accused expresses his desire to testify, his statement will be rendered in accordance with the provisions of this Code. In the case of several defendants, their statements will be received successively, preventing them from communicating with each other before receiving all of them.

Explanation: The accused has at all times the right to testify about the facts for which he is being accused, so if he decides to do so, he must go to the witness stand to be questioned by the defense in accordance with litigation techniques.

It is important to point out that since the right of the accused to testify or to remain silent is a constitutional right, as indicated in article 20, section B, section II, it is then, by exception, that the prosecutor cannot offer the accused to give his statement. That is why the prosecutor can always confront the defendant's saying by way of cross-examination, this as long as the accused agrees to testify according to the facts.

Article 313. Opportunity to resolve the request for linking to the process.

After the accused has issued his statement, or expressed his desire not to, the agent of the Public Ministry will request the control judge the opportunity to discuss precautionary measures, if applicable, and subsequently request the link to the process. Before listening to the agent of the Public Ministry, the control judge will address the accused and explain the moments in which the request that the Public Ministry wishes to make can be resolved.

The control judge will question the defendant if he wants a resolution on his link to the process in that hearing within the period of seventy-two hours or if he requests an extension of said period. In the event that the accused does not accept the constitutional term or request its duplication, the Public Prosecutor's Office must request and justify the linking of the accused to the process, exposing at the same hearing the evidence with which it considers that a fact that the law indicates as a crime and the probability that the accused committed it or participated in its commission. The control Judge will give the defense the opportunity to answer the request and, if deemed necessary, will allow the

reply and counter-reply. Once this has been done, the legal situation of the accused will be resolved.

If the defendant expresses his wish that his link to the process be resolved within a period of seventy-two hours or requests an extension of said period, the Judge must set a date for holding the hearing on the link to the process within said period. or its extension.

The hearing to link the process must be held, as the case may be, within seventy-two or one hundred and forty-four hours after the detained defendant was placed at his disposal or that the accused appeared at the hearing to formulate the accusation. .

The control judge must inform the authority responsible for the establishment in which the accused is hospitalized if, upon resolving his legal situation, preventive detention was also imposed as a precautionary measure or if the duplication of the constitutional term is requested. If, after the constitutional term, the control judge does not inform the responsible authority, the latter must draw their attention to said individual in the very act of concluding the term and, if they do not receive the aforementioned certificate within the following three hours, they must notify the defendant released.

Explanation: Immediately after the defendant has expressed his desire to declare or not to do so, the public prosecutor must request the link to the process, this is the moment in which the accused can decide if at that moment it is resolved on it, or If it is your wish that it be resolved in 72 or 144 hours, this being the exclusive decision of the accused, since based on the formalities of the process the prosecution does not have the power to request this extension, since the same would cause harm to the accused, and even more so if pretrial detention is requested against him, based on article 19 of the Constitution in its fourth paragraph.

This judicial criterion will help to better interpret this article:

LINK TO PROCESS. MOMENT AT WHICH THE PUBLIC PROSECUTOR MUST REQUEST IT (NATIONAL CODE OF CRIMINAL PROCEDURES AND CODE OF CRIMINAL PROCEDURES OF THE STATE OF MORELOS REPEALED).From reading the articles309 and 313 of the National Code of Criminal Procedures -content similar to numerals280 and 281 of the Code of Criminal Procedures of the State of Morelos repealed-, derives a legitimate doubt regarding whether the request for linkage to the process must be formulated by the Public Ministry before the accused decides whether or not to accept the lapse of 72 hours to resolve his legal situation -or its extension- , or if it can be done later, even in the continuation of the initial hearing, once the means of conviction presented by the defense have been received. However, to resolve this doubt, the following premises must be based on: 1) the link to the process must be requested after the accusation has been formulated and the accused had had the opportunity to answer the charge; and, 2) the 72-hour term as the limit for detention before a judicial authority, established by article19 of the Political Constitution of the United Mexican States, constitutes a fundamental right, whose extension proceeds only when the

defendant himself requests it, which implies that this temporary extension operates in his favor and never against him. Thus, said propositions constitute the interpretative guideline that allows us to consider, on the one hand, that the imputation and the request for linking to the process are different actions and, on the other, that the decision of the accused to postpone the resolution on the link or not to the process cannot operate to your detriment, since its purpose is that you have more time to exercise your defense, so much so that the article314 of the National Code establishes the possibility, only for the accused and not for the Public Prosecutor's Office, of incorporating during that period the means of conviction that it deems appropriate. Due to the foregoing, this First Chamber of the Supreme Court of Justice of the Nation considers that the Public Prosecutor's Office, if it considers it appropriate, must request the link to the process after the accusation has been formulated and the accused has had the opportunity to answer the charge, but prior to the defendant deciding whether or not to accept the term referred to in Article 19 of the Constitution -or its extension- so that a decision can be made on their legal situation, since only then will the choice to postpone the respective judicial resolution be based on the prior knowledge of the specific reasons why the evidence collected during the informal investigation would justify said act of inconvenience, allowing the accused and his defense attorney, as a result of an informed act, to present the means of evidence in the continuation of the initial hearing that they consider could distort the ministerial position. In effect, if the defendant or his defense attorney chooses to postpone the indicated resolution for the sake of the right to a defense, it is logical that this decision should be based on prior knowledge of the specific reasons why the corporate representative believes that the evidence contained in the investigation file accredit the existence of the fact that is the subject of the imputation and the probability that the accused committed it or participated in its commission, since only then will he be in a position to offer the appropriate means of conviction to distort the imputation; Furthermore, if this order is not followed, the Judge could have difficulties in qualifying the relevance of the test data that the defense intends to incorporate.

Article 314. Incorporation of data and evidence within the constitutional term or its extension.

The defendant or his Defender may, during the constitutional term or its extension, present the test data that they consider necessary before the Control Judge.

Exclusively in the case of crimes that warrant the imposition of the precautionary measure of informal or other personal preventive detention, in accordance with the provisions of this Code, the Control Judge may admit the relief of evidence offered by the accused or his Defender. , when, at the beginning of the hearing or its continuation, they justify that this is pertinent.

Explanation: Based on the principle of contradiction and the right to exercise a technical defense by offering evidence to support an antithesis to the prosecutor's

statements, the defender and the accused can incorporate test data to achieve the expected results.

The law establishes a term of up to 48 hours prior to the holding of the continuation hearing to be able to request judicial assistance for the purpose of gathering evidence that may contribute to the defense. It is important to state that even though the defense has the capacity to present its own witnesses, it is strategic and convenient to request judicial assistance since in the event of their failure to appear, the control judge can make use of the means of urgency to obtain the appearance. of the aforementioned

However, according to what is indicated in the second paragraph of this article, only means of proof can be released (that the witness go up to the stand and submit to examination and cross-examination) only in the case of precautionary measures of a personal nature, that is, those indicated in fraction I, V, VI, VII, VIII, IX, X, XI; XII, XIII, and XIV) which are practically all of them.

Some judges have chosen to interpret this in the following way, only when the accused has been requested an unofficial or justified precautionary measure of preventive detention is when he will be able to present evidence, otherwise, that is, when he is not subject to preventive detention, the defendant's defense must provide the records he has (interviews, expert opinions) and deliver them to the public prosecutor, so that he can enter them as evidence in the investigation folder.

Lastly, these data must be read by the defense at the hearing for the continuation of the initial hearing.

Article 315. Continuation of the initial hearing.

The continuation of the initial hearing will begin with the presentation of the evidence provided by the parties or, as the case may be, with the presentation of the means of evidence offered and justified by the accused or his counsel in terms of article 314 of this Code. For this purpose, the rules provided for the presentation of evidence in the oral trial debate hearing will be followed. Once the evidence has been presented, if any, the floor will be granted first to the Public Ministry, to the legal adviser of the victim and then to the accused. Once the debate has been exhausted, the Judge will decide whether or not the defendant is involved in the process.

In cases of extreme complexity, the Control Judge may decree a recess that may not exceed two hours, before deciding on the legal situation of the accused.

Explanation: The means of proof that are presented by the defense will have to be unburdened with the rules of the oral trial, that is, in case of seeking to incorporate information through witnesses or experts, the source of the evidence will have to be presented, to that in turn, they declare about what they know about the fact, or in the case of experts, the conclusions they reached, rules that must be observed in the event that the accused is protected by any precautionary measure of a personal nature.

Otherwise, the continuation of the initial hearing must begin with the presentation of the test data by the defense, since due to a recently published jurisprudence, the test data offered by the public prosecutor must be exposed. before the end of the initial hearing.

Article 316. Requirements to issue the order linking the process.

The control judge, at the request of the agent of the Public Ministry, will issue the order linking the accused to the process, provided that:

I. The imputation has been formulated;

Explanation: Let us remember that this is the procedural requirement consisting of the communicative action carried out by the agent of the public prosecutor to the accused and where he indicates that an investigation is being carried out against him, the typical classification of that fact, the degree of participation and authorship and the people who testify against.

II. The accused has been given the opportunity to testify;

Explanation: In the same way, the control judge at the end of the public prosecutor's office to formulate an accusation, must ask the accused if it is his wish to declare, at the time of letting him know that right and that the accused makes his decision to do so or not, it is fulfilled with this point.

III. From the background of the investigation presented by the Public Prosecutor's Office, evidence is obtained that establishes that an act has been committed that the law establishes as a crime and that there is a probability that the accused committed it or participated in its commission. It will be understood that there is data that establishes that an act has been committed that the law indicates as a crime when there are reasonable indications that allow us to assume it, and

Explanation: Due to this section, it is important to point out that in order to prove that an act designated as a crime by law has been committed, a rationality test is regularly applied, which will be added to this explanation.

IV. That a cause of extinction of the criminal action or exclusion of the crime is not updated.

At this point it is important to verify the assumptions established in numeral 485 of this law where the causes that exclude crime are listed.

The order of connection to the process must be dictated by the fact or facts that were the reason for the imputation, the control Judge may grant them a different legal classification from the one assigned by the Public Ministry itself, which must be made known to the accused for the purposes of his defense. .

The process will be followed necessarily by the criminal act or acts indicated in the order linking the process. If in the aftermath of a process it appears that a criminal act other than the one pursued has been committed, it must be the subject of a separate investigation, without prejudice to the fact that accumulation can be decreed later if appropriate.

Explanation: After the order of linkage to the process has been issued, the fact for which it was issued cannot be changed, even when the legal classification could vary, because the capricious change of the fact, which in addition to being illegal, would affect the right of the defense of creating a theory of the case consistent with the facts that are imputed.

This judicial criterion will help to better interpret this article:

AUTO LINK TO PROCESS. RATIONALITY TEST THAT SHOULD BE APPLIED TO THE STUDY OF THE TEST DATA, FROM WHICH IT MAY BE ESTABLISHED THAT AN ACT HAS BEEN COMMITTED AS A CRIME [MODIFICATION OF THESIS XVII.1o.P.A.31 P (10a.)].*This Collegiate Circuit Court, in the isolated thesis XVII.1o.P.A.31 P (10a.), established the rationality test that should be applied by the amparo court, in relation to the background of the investigation as a control canon of legality of the linking order to process. Now, a new reflection on the subject, leads this court to modify said criterion, to now define the test that should be applied for the study of the test data from which it can be established that an imputed act has been committed. as a crime, which aims to differentiate the level of evidentiary requirement that is applicable in the resolutions that can be issued in the initial hearing, compared to the final sentence issued in the oral trial. In the factual premise, the following is required for the acceptance or rejection of a theory: a) A hypothesis (theory of the case): It is a proposition that is supported by a fact captured through the senses. b) The statements that make up the hypothesis; reasoning with a certain probability or plausibility. c) The verifiability of the statements, through the existence of data that establish that an act has been committed that the law indicates as a crime and the probability that the accused committed it or participated in its commission and, the assessment must be rational, that is that is, one that in its practice uses rational, logical elements or rules, maxims of experience, scientific method and reflective thinking, to assess and interpret the results of the contribution of test data in conjunction with what is alleged to determine what can give or consider as proven, which ultimately is nothing more than evaluating the degree of probability, based on the available means, if a hypothesis about the facts can be considered true. d) The acceptance or rejection of the hypothesis, through the argumentation of the accepted hypothesis and the refutation, by contrast, of the rejected one. The acceptability of a hypothesis is a judgment about its confirmation and not refutation. Once confirmed, it must still be subjected to refutation by examining the possible facts that -if they exist- will invalidate or reduce the degree of probability of the hypothesis, that is, the Judge contrasts some statements -hypotheses- testing their explanatory value. A hypothesis is considered confirmed by data or means of proof if there is a causal or logical link between the two, so that a reason for its*

acceptance is configured. Confirmation corresponds to an inference by virtue of which, based on some test data and a rule that connects these test data with the hypothesis, one concludes by accepting the truth of the latter.

AUTO LINK TO PROCESS. TO SATISFY THE REQUIREMENT REGARDING THE LAW INDICATING THE IMPUTED ACT AS A CRIME, IT IS SUFFICIENT FOR THE JUDGE TO FRAME THE CONDUCT WITH THE CRIMINAL STANDARD, IN A WAY THAT ALLOWS THE IDENTIFICATION OF THE REASONS THAT LEAD HIM TO DETERMINE THE APPLICABLE CRIMINAL TYPE (NEW JUSTICE SYSTEM PENAL).From the article19, first paragraph, of the Federal Constitution, amended by Decree published in the Official Gazette of the Federation on June 18, 2008, it follows that in order to issue an order linking the process, it is necessary to meet certain formal and substantive requirements. Regarding the latter, it is necessary that: 1) there is data that establishes that an act has been committed, 2) the law indicates that act as a crime and 3) there is a probability that the accused committed it or participated in its commission. Now, the constitutional text contains the guidelines that mark the transition from a mixed criminal justice system to one of accusatory, adversarial and oral court, as revealed by the substitution, in the aforementioned requirements, of the expressions "verify" by "establish". and "body of the crime" for "fact that the law indicates as a crime", which denote a paradigm shift in the way of administering justice in criminal matters, since in accordance with the reasons that the Constituent Power itself registered in the legislative process, With the second expression, "evidence" is no longer required, nor is it required to "verify" that an illegal act occurred, which prevents the trial from being brought forward within the constitutional term, that is, it is no longer permissible that in the preliminary investigation, evidence is configured by the Public Prosecutor's Office, by itself and before itself -as happens in the mixed system-, which eliminates the unilateral procedure for obtaining evidence and, consequently, strengthens the trial, the only stage procedure in which, with equal conditions, the evidentiary production of the parties is carried out and the facts that are the subject of the process are demonstrated. Hence, with the second expression, the constitutional norm no longer requires that the test object fall on the so-called "body of the crime", understood as the accreditation of the objective, normative and/or subjective elements of the typical description of the corresponding crime, given that this exercise, identified as a judgment of criminality, is only required for the issuance of a sentence, since it is at this stage that the judge decides whether or not the crime was accredited. In this sense, to issue an order linking the process and establish that an act that the law indicates as a crime has been committed, it is enough for the judge to frame the conduct within the criminal norm, which allows identification, regardless of the methodology adopted. , the applicable criminal type. This level of demand is in accordance with the effects generated by said resolution, which translate into the continuation of the investigation, in its judicialized phase, that is, from which the judge intervenes to control the actions that could derive in the violation of a fundamental right. In addition, unlike the traditional system, its issuance does not condition the legal classification of the crime, because this element will be determined in the indictment, based on all the information derived from the

investigation, not only from the initial phase, but also of the complementary, nor is it equivalent to an advance of the trial, because the background of the investigation and elements of conviction that served to found it, as a general rule, should not be considered for the issuance of the sentence, except for the exceptions established in the law.

Article 317. Content of the order linking the process.

The order linking the process must contain:

I. The personal data of the accused;

As a procedural requirement to create legal certainty and procedural identity based on the person being prosecuted, it is of the utmost importance that the order linking the process establish the data of the accused.

II. The grounds and reasons for which the requirements mentioned in the previous article are considered satisfied, and

Judges are at all times obliged to justify and motivate their decisions, as required by numeral 134 section I of this same law, where they have to carry out an objective exercise indicating the test data provided by the parties, and where appropriate the relief of the same, analyzing in detail the information incorporated to the audience and making a decision with complete objectivity and free of stereotypes.

III. The place, time and circumstances of execution of the fact that is charged.

This fraction is of the utmost importance, since the fact for which it has been charged and linked to the process, regardless of whether a different legal classification is granted in the future, will be the one that will govern throughout the course of the process, giving the defendant certainty about what fact is the one accused and how to create, together with his defender, the defensive strategy to deal with the accusation.

Article 318. Effects of the order linking the process.

The order linking the process will establish the criminal act or acts on which the process will continue or the anticipated forms of termination of the process, the opening of a trial or the dismissal will be determined.

Explanation: In the event that the judge considers that the requirements have been met to be able to decree a link to the process, this will have the consequence that the formalized investigation stage begins, in addition to the determinations that can be made in relation to the criminal acts. that will be followed

Article 319. Order of non-binding process.

In the event that any of the requirements set forth in this Code are not met, the control judge will issue an order not to link the accused to the process and, where appropriate, will order the immediate release of the accused, for which reason the precautionary measures will be revoked. and the anticipated precautionary measures that have been decreed.

The order of non-linkage to the process does not prevent the Public Prosecutor's Office from continuing with the investigation and subsequently formulating a new accusation, unless the dismissal is decreed.

Explanation: The order of non-linkage to the process has the legal consequence that the investigation returns to the formalized investigation stage, where the public prosecutor will be able to collect new test data for the purpose of being able to formulate the imputation again.

Article 320. Value of the actions.

The background of the investigation and elements of conviction provided and released, as the case may be, in the hearing to link to the process, which serve as the basis for the issuance of the order to link to the process and the precautionary measures, lack probative value to establish the judgment, except for the express exceptions provided by this Code.

Explanation: In the trial hearing, the way in which the prosecutor will incorporate the relevant information to prove his tax theory will be different, it will no longer be through research data, which is precisely the records he has, the interviews taken, photographs, expert reports, among other test data that you can, but you must unburden the evidence, observing at all times the principles of immediacy and contradiction, that is, witnesses, experts, expert witnesses and other people who have to provide information relevant to the fact, they must appear in court and speak out loud about what they know.

In the case of an abbreviated procedure, the investigation history may be evaluated, although they must be exposed again so that the judge can justify the sentence.

Article 321. Term for the complementary investigation.

The Control Judge, before the end of the initial hearing, will determine the term for the closure of the complementary investigation, upon proposal of the parties.

The Public Prosecutor's Office must conclude the complementary investigation within the period indicated by the control judge, which may not be more than two months in the case of crimes whose maximum sentence does not exceed two years in prison, nor six months if the penalty maximum exceeds that time or may exhaust said investigation before its expiration. Once the period for the closure of the investigation has elapsed, it will be

considered closed, unless the Public Prosecutor, the victim or offended party or the accused have justifiably requested an extension of the same before the end of the period, observing the maximum limits established in this article. .

In the event that the Public Prosecutor considers closing the investigation early, it will inform the victim or offended party or the accused so that, where appropriate, they may state what is appropriate.

Explanation: The complementary investigation period is intended for the prosecution to collect all the data and evidence necessary to reliably prove the elements of the crime, that is, its objective, subjective and regulatory elements, and on the other hand the full responsibility of the defendant.

This judicial term is also used by the defense to be able to prove their theory and the factual propositions that they intend to prove in court.

In the event that the public prosecutor has the purpose of closing the investigation before the closure already established previously by the judge, he will have to request it and justify the need for the measure, where the defender and the accused will have the right to oppose in case of that it considers its rights are being violated with this possible judicial resolution.

Article 322. Extension of the term of the complementary investigation.

Exceptionally, the Public Prosecutor's Office may request an extension of the complementary investigation term to formulate an accusation, in order to achieve a better preparation of the case, founding and motivating its request. The Judge may grant the extension as long as the term requested, added to the one originally granted, does not exceed the terms indicated in the previous article.

Explanation: The purpose of the Public Prosecutor's Office is to be able to request that the complementary investigation period that it has requested be extended, as long as it does not exceed the limits established in numeral 321 of this law.

In procedural matters, the judge must be extremely strict in objectively analyzing the reason for the extension of the term, and if this request is actually supported by new evidence that may have arisen throughout the complementary investigation and that Due to material impossibility, they could not be carried out within the established deadlines. Undoubtedly, what must be avoided is that these deadlines are extended due to unjustified inactivity of the prosecution, which clearly harms the rights of the victim and the accused, who commonly have the right to prompt and expeditious justice. within the deadlines established by law.

Article 323. Term to declare the closure of the investigation.

Once the period for the closure of the investigation has elapsed, the Public Prosecutor's Office must close it or request a justified extension from the control judge, observing the maximum limits provided for in article 321.

If the Public Prosecutor's Office does not declare the investigation closed within the established period, or does not request its extension, the accused or the victim or offended party may request the control judge to warn him so that he proceeds to such closure.

Once the term for the closure of the investigation has elapsed, it will be considered closed unless the Public Prosecutor or the accused have justifiedly requested an extension of the same to the Judge.

Explanation: Invariably, the period of complementary investigation has a maximum established by law, which is 6 months, in this case when they are crimes whose maximum sentence exceeds two years.

This investigation term is requested by the public prosecutor and at the time ratified by the defender, unless the defense considers that he needs more time to generate his defense, or otherwise, that the public prosecutor is exceeding the term requested because there was no reasonable justification for the time requested with the investigation acts pending review.

In practice, it does not happen regularly that the public prosecutor notifies the defense that the investigation period has closed, so it is important above all to be aware that during the period of 15 days after the closure of the investigation the public prosecutor complies with any of the obligations established in 324.

If any of the parties needs more time in order to continue carrying out investigative acts, it is necessary to ask the control judge for a justified extension of the term, it is important to remember that only one that indicates certain investigative acts to be carried out that arose from information incorporated into the process.

Article 324. Consequences of the conclusion of the term of the complementary investigation.

Once the complementary investigation is closed, the Public Ministry must, within the following fifteen days:

I. Request the partial or total dismissal;

II. Request the suspension of the process, or

III. Formulate accusation.

Explanation: The prosecutor's office, as this article refers to, has three options to take after the fifteen days after the complementary investigation was closed, which are mentioned in these sections and said points are explained throughout this work.

The legal consequence that arises in the event that the public prosecutor does not comply with its duty to formulate an accusation in the event that this is its decision,

is precisely that the judge orders the dismissal of the present case, as long as what is indicated also happens. the following article, and this would lead to the termination of the criminal proceedings with an acquittal for the accused.

This would surely unleash both administrative and criminal liability on the public prosecutor's office in charge of the criminal case.

Article 325. Extinction of the criminal action for breach of the term.

When the Public Prosecutor's Office does not comply with the obligation established in the previous article, the Control Judge will bring the fact to the attention of the Prosecutor or the public servant to whom he has delegated this power, so that he can rule within fifteen days. After this period has elapsed without ruling, the Control Judge will order the dismissal.

Explanation: After the term of fifteen days has elapsed without the public prosecutor having complied with his procedural obligation to comply with what is established in the previous article, an additional period of fifteen days will be granted after the control judge has given a hearing to the attorney for the purpose of the prosecution complying with its obligation, in the event that this situation persists and the fifteen days have elapsed, the public prosecutor does not comply with the obligation, the judge will summon a hearing to dismiss the case penal.

Article 326. Miscellaneous petitions to the accusation.

When only various requests are made to the prosecution of the Public Prosecutor's Office, the control judge will resolve what corresponds without substantiation, unless otherwise provided or that he deems essential to hold a hearing, in which case he will convene the parties.

Explanation: At this point, what the control judge must observe is that the petitions of the parties are requests that only require processing, and that there is no need to call a hearing for such purposes, where, as indicated, this will resolve without resolving any substantive issue. Only in the event that it is considered that for such purposes there is a need to call a hearing because it considers that it disrupts any right of the opposing party, it will schedule it to give entry to it.

Article 327. Dismissal.

The Public Prosecutor's Office, the accused or his Defender may request the Court to dismiss a cause; Once the request has been received, the Court will notify the parties and will summon, within the following twenty-four hours, a hearing where the relevant matter will be resolved. The non-appearance of the victim or offended party duly cited will not prevent the Court from ruling on the matter.

The dismissal will proceed when:

I. The act was not committed;

At this point, it must be proven that the act for which it was charged was not carried out, due to the appearance of new clear and consistent evidence that leads to that conclusion.

II. The act committed does not constitute a crime;

In this fraction, it is proven that an event did indeed exist and that it is the matter of imputation, however, this fact, based on an objective analysis, leads to the determination that it has the characteristics of being atypical, that is, that it does not meet the elements of the type to be criminally relevant.

III. The innocence of the accused appears clearly established;

The word "clearly" established in this fraction is highly relevant for the purposes of requesting the dismissal, since there should be no doubts about the innocence or non-participation of the accused in the facts that, even though they may constitute a crime, are not attributable to the person who It is being processed.

The public prosecutor has the obligation to act with complete objectivity in the event that there are clear elements that lead to this conclusion.

IV. The accused is exempt from criminal responsibility;

In this case, it would be necessary to prove that some cause of justification or inculpability is updated that will not make his action unlawful. It could also arise at this point that it will be proven that the person being tried is not of age to commit criminally relevant acts or that the person will have jurisdiction.

V. Once the investigation has been exhausted, the Public Ministry considers that it does not have sufficient elements to found an accusation;

This fraction only enables the public prosecutor to be able to exercise it, by fulfilling its obligation of objectivity and considering that there are not enough elements to support the accusation.

VI. The criminal action has been extinguished for any of the reasons established in the law;

It could be the case that the criminal action is extinguished due to a cause of extinction of the criminal action, such as the forgiveness of the victim or offended party, the application of a criterion of opportunity or any other of those that mark this same. arrangement which will be explained in that same article.

VII. A subsequent law or reform repeals the crime for which the process is being followed;

In the event that by reform or law the criminally relevant fact is no longer considered a crime, the criminal case must be immediately dismissed, as for

example it has happened that defamation and slander have ceased to be crimes if not in all cases. states in most of these.

VIII. The fact in question has been the subject of a criminal process in which a final sentence has been handed down with respect to the accused;

Based on the "Non bis in idem" principle, it is strictly prohibited to try a person for the same facts that arose, even if an acquittal had been issued in favor of the accused.

IX. Death of the defendant, or

Since by law it is prohibited to transfer or inherit criminal responsibility to any person, in the event that the accused dies, the dismissal of the criminal case must be decreed, which will have as a consequence that there is no crime to be prosecuted.

In relation to the reparation of the damage in favor of the victim or offended party, in the event that this has not been covered at the time of the death of the accused, he may access, through the corresponding administrative procedure, the fund for aid, assistance and comprehensive reparation so that this subrogates the damage caused to the victim and is covered.

X. In other cases where provided by law.

This judicial criterion will help to better interpret this article:

DISMISSAL PROVIDED FOR IN ARTICLE 327 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. WHEN PROMOTED IN THE INTERMEDIATE STAGE, IT IS APPROPRIATE AND, THEREFORE, MUST BE PROCESSED AND RESOLVED IN ACCORDANCE WITH ARTICLES 327 TO 330 OF THE CODE ITSELF.Article327 of the National Code of Criminal Procedures establishes that when a request for dismissal presented by any of the legitimate subjects is received, the court will notify the parties and will summon, within the following twenty-four hours, a hearing where the relevant matter will be resolved, without it being an obstacle to it. the non-appearance of the victim or offended duly cited. In addition, from the systematic interpretation of the articles327 al 330 of the aforementioned ordering with the various15 and 17 of the Federal Penal Code and according to the article1st. of the Political Constitution of the United Mexican States It is inferred that, since the firm dismissal has the effects of an acquittal, it can be raised at any stage of the procedure, as occurs when some cause of exclusion of the crime is invoked, since both figures translate into the culmination of the process and with this, privilege is given. the right of the defendant to destroy the accusation against him, in order to fully enjoy his fundamental right to personal liberty. Therefore, since this adjective code does not establish any precept that limits the filing of the dismissal incident to a certain stage of the accusatory criminal process, and the defendant's defense attorney carries it out in the intermediate hearing, arguing that the criminal offense for which linked him to the process, its study is appropriate

and, therefore, it must be processed and resolved in accordance with the system provided for in articles 327 to 330 indicated.

Article 328. Effects of dismissal.

The firm dismissal has the effects of an acquittal, puts an end to the procedure in relation to the defendant in whose favor it is issued, inhibits a new criminal prosecution for the same act and terminates all precautionary measures that may have been issued.

Explanation: The effects of this court decision are absolute, so the company representation loses the power to initiate criminal action for the same facts.

Article 329. Total or partial override.

The dismissal will be total when it refers to all the crimes and all the defendants, and partial when it refers to a crime or a defendant, of the various ones to which the investigation has been extended and which have been linked to the process.

If the dismissal is partial, the process will continue with respect to those crimes or those accused to whom it was not extended.

Explanation: In the course of the investigation, the particularity may arise that it is shown that one of the accused persons is a candidate for dismissal solely due to their responsibility, for any of the causes established in the previous article, in this case, a hearing only because of what corresponds to these people, and the process will continue for those others who have not been benefited by this resolution.

Article 330. Powers of the Judge regarding the dismissal.

The Control Judge, when ruling on the request for dismissal raised by any of the parties, may reject it or decree the dismissal even for reasons other than the one raised in accordance with the provisions of this Code.

If the victim or victim opposes the request for dismissal made by the Public Prosecutor, the accused or his Defender, the Control Judge will rule based on the arguments presented by the parties and the merits of the case.

If the Control Judge admits the objections of the victim or offended party, he will deny the request for dismissal.

If there is no opposition, the request for dismissal will be declared appropriate without prejudice to the right of the parties to appeal.

Explanation: The judge has the power in this request to order the dismissal for another situation, even if this has not been indicated in the arguments of the parties, provided that the information incorporated makes it evident that a different hypothesis is updated.

In the event that the victim or offended party, either by their own voice or accompanied by their victim advisor, opposes the proposed resolution, they must argue the legal points on which their petition rests, it is important to note that they must focus on arguing based on the fraction that according to the parties the dismissal is updated.

DISMISSAL IN THE ACCUSATORY CRIMINAL SYSTEM. IN ORDER TO DECREE IT IN THE STAGES PRIOR TO THE TRIAL, THE CONTROL JUDGE IS NOT REQUIRED TO HAVE EVIDENCE IN SIGHT, PROVIDE ITS RELEASE OR CARRY OUT AN EXHAUSTIVE ASSESSMENT EXERCISE. Based on the premise that the accusatory criminal system is governed by conclusive and sequential stages (investigation - in its initial and complementary phases-, intermediate and trial), it can be affirmed that the concept of evidence takes place during the process and is verified based on the specific objective of each hearing, in accordance with the deformalization specified by the National Code of Criminal Procedures in the distinction between evidence, means of evidence and evidence; Hence, the adjective legislation itself establishes which evidence, exceptionally, can be unburdened in stages prior to the trial (for example, in the initial hearing or its continuation, in review of precautionary measures, or the anticipated evidence, this under its own regulation). For its part, the dismissal, understood in the light of the accusatory criminal system as the judicial decision by virtue of which the termination –total or partial– of the process is decided, for certain legal reasons that prevent its continuity and its subsequent opening with respect to the same facts, generating the cessation of the precautionary measures and the authority of res judicata, is harmonized so that, whatever the cause proposed (by the parties or warned by the judge) must be subject to the exercise of contradiction, as is Thus, the court, in order to resolve its admissibility or rejection, must carefully analyze the allegations of the parties, so that there is no reasonable doubt about its updating, otherwise - without certainty or based on probabilities-, considering for its purposes, it would generate a procedural imbalance due to the undue advantage of one of the parties. However, the foregoing does not imply that in procedural stages prior to the trial, it is required of the Control Judge to have evidence in view, provide his relief or carry out an exhaustive assessment exercise -outside the exceptions provided by law- to be able to resolve what is relevant, since this would deform the legal nature and essence of the accusatory criminal procedure system, as well as the legal principles on which it is based; rather, the former can estimate the existing evidence in an indicative manner and exclusively based on the allegations of the parties made at the hearing, where they allude to it as a reference and not as a means of relief. Therefore, if the elements provided to prove the dismissal are not sufficient to bring conviction to the judge and, on the contrary, they generate controversy, and this, in turn, is not overcome by any other means, the decision cannot be favorable. request made. In this sense, the refusal resolution entails the continuation of the procedure, but it does not upset the legal situation of the accused, to the extent that this is governed by the order of link to the process decreed against him; Therefore, it does not violate the principle of presumption of innocence.

Article 331. Suspension of the process.

The competent Control Judge will decree the suspension of the process when:

I. The subtraction of the accused to the action of justice is decreed;

Based on the provisions of numeral 141, fourth paragraph of this code, if the accused does not appear for a judicial summons without just cause, escapes from the establishment where he was detained or leaves the home without notice, having the obligation to give it, it is that the subtraction of the action of justice was declared.

II. It is discovered that the crime is one of those with respect to which it is not possible to proceed without certain requirements being satisfied and these have not been fulfilled;

III. The defendant acquires a temporary mental disorder during the process, or

In the same way, it is important to state that this situation must be clearly accredited by the respective expert in medical and psychological matters that proves such circumstance.

IV. In the other cases that the law indicates.

Article 332. Reopening of the process when the cause of suspension ceases.

At the request of the Public Prosecutor or any of those involved in the process, the Control Judge may order the reopening of the process when the cause that motivated the suspension ceases.

Explanation: When any of the causes indicated in the parts above has ended, either because an arrest warrant has been executed for the accused, because lucidity has returned, or the procedural requirement has been obtained to continue with the case. process, it will be opened and the procedural deadlines will run again.

Article 333. Reopening of the investigation.

Until before the accusation is presented, the parties may reiterate the request for specific investigative procedures that they have formulated to the Public Ministry after the order of connection to the process has been issued and that it has rejected.

If the control judge accepts the request of the parties, he will order the Public Prosecutor to reopen the investigation and proceed to comply with the proceedings within the period that he will set. In said hearing, the Public Prosecutor's Office may request the extension of the term only once.

The request to carry out investigative acts that have been ordered at the request of the parties and have not been complied with due to negligence or an act attributable to them,

nor those that are impertinent, those whose purpose is to prove facts will not proceed. public and notorious, nor all those that have been requested with purely dilatory purposes.

Once the term or its extension has expired, the investigation subject to reopening will be considered closed, or even before that if the actions that motivated it have been completed, and it will proceed in accordance with the provisions of this Code.

Explanation: The period of complementary investigation begins from the moment in which it is linked to the process and ends on the date established by the judge for such purposes.

However, the law establishes in article 324 of the national code of criminal procedures, a period of 15 days for the public prosecutor to comply with one of its obligations, including filing an accusation.

Within this time range, that is, from the expiration of the investigation term until the accusation is filed, whoever has requested the public prosecutor to release investigation acts may request the judge to reopen it, in order to carry out these investigations, with the limitation that at the moment of presenting the accusation this possibility exists.

TITLE VII: INTERMEDIATE STAGE

CHAPTER I: OBJECT

Article 334. Object of the intermediate stage.

The purpose of the intermediate stage is the offer and admission of the means of proof, as well as the purification of the controversial facts that will be the subject of the trial.

This stage will consist of two phases, one written and one oral. The written phase will begin with the indictment prepared by the Public Ministry and will include all the acts prior to the holding of the intermediate hearing. The second phase will begin with the holding of the intermediate hearing and will culminate with the issuance of the order to open the trial.

Explanation: The intermediate stage, as referred to in the first paragraph, has as its primary purpose the debate on the means of proof that for some of the reasons expressed in article 346 of this code, should not enter the debate in court.

The written intermediate stage begins when the prosecution complies with the obligation to present an accusation, which must be presented within the deadlines established in numeral 324 of the code, and ends at the moment of conducting the oral phase intermediate hearing, which Therefore, it begins when the prosecution orally exposes the accusation.

This judicial criterion will help to better interpret this article:

INTERMEDIATE STAGE OF THE ACCUSATORY CRIMINAL PROCESS. ONE OF ITS OBJECTIVES IS TO PURIFY THE PROBATORY MATERIAL THAT IS GOING TO DISCUSS IN THE ORAL TRIAL, EXCLUDING THAT WHICH HAS BEEN OBTAINED WITH VIOLATION OF FUNDAMENTAL RIGHTS.In the accusatory criminal justice system, the closing of the formalized investigation is not immediately followed by the oral trial, but by an "intermediate" stage that is also carried out before the control judge. Said stage begins with the formulation of the accusation by the Public Prosecutor's Office and its main objective is the preparation of the trial, precisely establishing its object, the intervening subjects and the means of proof that must be presented. In this sense, one of the main functions of the control judge during this stage is to ensure that during the investigation no violations of the defendant's fundamental rights were committed and, where appropriate, guarantee that the consequences of these are not transferred to the trial stage. Thus, when issuing the order to open the trial, the control judge must verify this situation and exclude any means of evidence obtained from a violation of fundamental rights. Consequently, it will be precisely during the intermediate stage when the accused must express the approaches that he considers pertinent regarding the violation of his fundamental rights that have had an impact on obtaining evidence and, consequently, request the exclusion of these. of the probative material that will be presented in the oral trial. We must not lose sight of the fact that in order for the new criminal justice system to function properly, it is necessary that the issues

related to the exclusion of evidence derived from violations of fundamental rights, be definitively clarified prior to the opening of the oral trial, in such a way that that the judge in this last stage has the exclusive function of analyzing the evidence to determine the existence of the crime and the responsibility of the accused.

Article 335. Content of the accusation.

Once the complementary investigation phase has been completed, if the Public Prosecutor considers that the investigation provides elements to bring criminal action against the accused, it will present the accusation.

The accusation of the Public Ministry must contain clearly and precisely

I. The individualization of the defendants and their Defender;

Explanation: It is of the utmost importance that these data be clearly presented, since firstly, the court must verify that it is the accused or accused indicated in the order linking the process, and on the other hand, it must prepare the future intermediate hearing, so it is important to make the corresponding notifications.

II. The identification of the victim or offended party and his legal adviser;

Explanation: In the same way as what is established in the previous section, it is extremely important to establish the identity of the victim or offended party and their adviser, to verify that there is identity among those established in the order linking the process, and on the other hand, In addition, the corresponding notifications can be made.

III. The clear, precise, circumstantial and specific relationship of the facts attributed in manner, time and place, as well as their legal classification;

Explanation: The fact that was indicated in the formulation of the accusation must be the one that lasts throughout the sequel to the process, so the prosecutor must make an effort to write a fact that complies with the points established in this fraction, since this at his At the same time, it generates legal certainty for the defendant to be able to support the defense in a technical and adequate manner.

For purposes of legal consistency in the process, this point is extremely important.

The facts for which the order linking the process was issued must be the same, unless they are only peripheral details that do not render the defendant defenseless, since if so, the defendant or his defense attorney could point out this formal defect. .

The legal classification can vary due to what is established in the order of connection to the process, however, at the time if this happens, the control judge must give the necessary time for the defense to prepare its case, in case of so request it.

IV. The relation of the modalities of the crime that concur;

In the event that the crime has some mitigating or aggravating modality, it must be mentioned in the indictment.

V. The authorship or specific participation attributed to the accused;

Explanation: It must be established if the defendant acted as direct author, co-author, mediate author, etc.

VI. The expression of the applicable legal precepts;

Explanation: It is extremely important to justify the articles that are applicable to the typical behavior and the form of participation.

VII. The indication of the means of proof that it intends to offer, as well as the anticipated proof that has been presented in the investigation stage;

Explanation: This is the main point of the accusation, since the means of proof that are intended to be offered must be clearly indicated, as well as their relevance.

Testimonials, expert opinions, documentaries and other means of proof are regularly the means of proof that are offered within the accusation.

VIII. The amount of the damage repair and the means of proof offered to prove it;

Explanation: The prosecutor must add to his accusation the amount of reparation for the damage that he intends to request from the defendant for the crime for which he is accused, and at the same time, present the evidence with which he intends to support it.

IX. The penalty or security measure whose application is requested including, where appropriate, the one corresponding to the crime contest;

Explanation: The prosecution requests the penalty to be imposed, which obviously must be within the parameters for it and the prosecutor must observe the individualization criteria with full objectivity at the time of its imposition.

X. The means of proof that the Public Ministry intends to present for the individualization of the penalty and, where appropriate, for the origin of substitutes for the prison sentence or suspension thereof;

XI. The request for confiscation of the insured assets;

XII. The proposal of evidentiary agreements, if applicable, and

Explanation: The procedural economy reaches in its aspect to the evidentiary agreements, which is nothing more than a point of agreement between the parties on some point of fact of the theory of the case that is not intended to be debated.

If there is no agreement between the parties to establish these evidentiary agreements, they should not be carried out.

XIII. The request that some form of early termination of the process be applied when it proceeds.

The accusation may only be formulated for the facts and persons indicated in the order linking the process, even if a different classification is made, which must be made known to the parties.

If the Public Prosecutor's Office or, where appropriate, the victim or offended party offer the testimony of witnesses or experts as means of evidence, they must present a list identifying themselves by name, surname, address and way of locating them, also indicating the points on which they will deal. the interrogations.

Article 336. Notification of the Accusation.

Once the accusation is presented, the Control Judge will order its notification to the parties the following day. With said notification they will be given a copy of the accusation.

Explanation: For the purposes of complying with the corresponding legal terms, the control judge will notify the defender, the accused, the victim or offended party and the legal adviser about the accusation made.

With this act, the ministerial accusation is communicated to the parties, which must contain all the requirements indicated in article 335 of this code.

Article 337. Discovery evidence.

The evidentiary discovery consists of the obligation of the parties to make themselves known to each other in the process, the means of proof that they intend to offer at the trial hearing. In the case of the Public Ministry, the discovery includes access and copying of all the records of the investigation, as well as the places and objects related to it, including those elements that it does not intend to offer as evidence in the trial. In the case of the accused or his defender, it consists of physically delivering a copy of the records to the Public Ministry at his expense, and access to the material evidence that he will offer at the intermediate hearing, which must be done under the terms of this Code.

The Public Ministry must comply with this obligation continuously from the moments established in the third paragraph of article 218 of this Code, as well as allow the access of the accused or his Defender to the new elements that arise in the course of the investigation. , except for the exceptions provided in this Code.

The victim or offended party, the legal adviser and the defendant or his Defender, must discover the means of proof that they intend to offer at the hearing of the trial, within the terms established in articles 338 and 340, respectively, for which, they must deliver materially a copy of the records and access to the means of evidence, at the expense of the Public Prosecutor's Office. In the case of expert evidence, the respective report must

be delivered at the time of discovering the means of evidence in charge of each of the parties, unless it is justified that they still do not have them, in which case, they must be discovered no later than three days before the start of the interim hearing.

In the event that the defendant or his defender requires more time to prepare the discovery or his case, he may request the control judge, before holding the intermediate hearing or at the hearing itself, to grant him a reasonable and justified period of time for such purposes.

Explanation: Evidentiary discovery means "opening the cards" between the partiesFor the purposes of knowing the evidence that each party has with them, deliver a copy of the records to each party thereof, complying with this with constitutional principles of legal certainty and contradiction in the process.

The obligation of the public ministry must deliver all the data and records it has, access to places of events or findings, in case they are insured, and access to the records that the public ministry has discriminated against because it considers them not valuable to prove his theory of the case.

In the case of the defense, in the same way, records and material evidence that is available must be delivered.

The public ministry must always allow the parties to access the investigative records as long as the provisions of the third paragraph of article 218 of this code have been complied with, that is, from the moment the first act of nuisance is generated, the first interview or the first summons to the accused, from that moment on, the actions of the public prosecutor can no longer be secret.

The victim and the legal adviser have a period of 3 days after the presentation of the accusation to "show their cards" to the parties.

As an exception to this term, in case of having expert evidence and not having the respective report by the time this term arrives, the expert must offer himself, and on the other hand, indicate that the report will subsequently be delivered no later than 3 days before the intermediate hearing. .

For the defender, the same rules apply, with the difference that his obligation to discover evidence, as indicated in article 340, is 10 days after the femicide, the term for the request for assistance from the victim or offended.

Finally, in favor of the right of defense, the defender or the accused may request a reasonable additional period from the control judge to be able to discover his means.

Article 338. Assistance in the accusation.

Within the three days following the notification of the accusation formulated by the Public Ministry, the victim or offended may in writing:

I. Be constituted as coadjuvants in the process;

II. Point out the formal defects of the accusation and require their correction;

III. Offer the means of proof that it deems necessary to complement the accusation of the Public Ministry, of which the accused must be notified;

IV. Request payment for damage repair and quantify its amount.

Explanation: For a better explanation of each of the fractions of this article, each of the fractions of this article will be explained, being the following:

1. ***Be constituted as coadjuvants in the process: The victim or offended through their legal advisor may be constituted as coadjuvant, with this they will be able to present a theory of the victim case, which is recommended to be equal to the theory of the prosecution, since otherwise this generates little conviction of the court in relation to what happened in the criminal act.***

2. ***Point out formal defects in the accusation: It is common for the public prosecutor to make mistakes in the written phase of the intermediate stage when presenting the accusation, in relation to any point indicated in article 335 of this code, so those defects or errors and request that they be corrected.***

3. ***Offer evidence: The victim has the right to present evidence in order to assert their rights.***

Historically, the right to reparation for damages was assumed to be the only right that the victim had due to the process, but based on the advances and rights achieved for this vulnerable group, they have been given a more active participation in order to participate. in the criminal process, so now you are not only allowed to provide evidence to prove damage caused, but also any other that can help to clarify the criminal acts,

Article 339. General rules of the coadyuvancia.

If the victim or offended party becomes an assistant to the Public Prosecutor's Office, the formalities provided for the accusation of the former shall be applicable as appropriate. The Control Judge must send notice of said request to the parties.

The assistance in the accusation by the victim or offended party does not alter the powers granted by this Code and other legislation applicable to the Public Ministry, nor will it exempt it from its responsibilities.

If there are several victims or offended parties, they may appoint a common representative, provided there is no conflict of interest.

Explanation: For the purposes of complying with the principles of due process, contradiction and equality between the parties, it is that in the same way the coadjuvant of the public prosecutor's office (victim) must comply with the evidentiary discovery, delivering some of the records that have been collected to each of the parties.

The Public Prosecutor's Office will at no time be substituted for its obligations in the criminal process, so it will continue to have the same participation and obligations even if the victim has been constituted as an adjuvant in the process.

Article 340. Action of the accused in the written phase of the intermediate stage.

Within the ten days following the expiration of the deadline for the request for assistance from the victim or offended party, the accused or his Defender, by writing to the Control Judge, may:

I. Point out formal defects in the indictment and rule on the coadjuvant's observations and if they consider it pertinent, request their correction. However, the defendant or his Defender may point out at the intermediate hearing;

II. Offer the means of proof that you intend to unburden in the trial;

III. Request the accumulation or separation of accusations,

IV. Manifestar about the evidentiary agreements.

The writing of the defendant or his Defender will be notified to the Public Prosecutor's Office and to the coadjuvant within twenty-four hours following its presentation.

Explanation: In this case, after the term for the victim to become an assisting accuser has expired, which is 3 days after notification of the presentation of the accusation formulated by the public prosecutor, the defendant has up to 10 days to rule on the following:

There are different types of formal defects, such as errors when calculating the sentence or calculating the repair of the damage, that the fact that is embodied in the accusation is different for what the already accused was linked to the process, among others.

In the event that the coadjuvant has added additional information to the accusation, such as that it has incorporated evidence, it is that the defense attorney or the accused can make the pertinent proposals for the legal effects that they have in mind to discuss.

All of the foregoing does not limit this procedural figure to doing so during the development of the intermediate stage in its oral phase, however, for purposes of preparing this hearing, it is advisable to do so at this time so that the counterparty

can prepare or pronounce on what has been indicated and that the process will not be delayed due to these circumstances.

In this case, the code does not grant the option that in the event that the defendant or defender intends to offer evidence, he does so at the intermediate hearing, oral phase, however, in practice it is still the case that the defendant or his The defender arrives at the intermediate hearing with a wealth of evidence and the social representation, the victim or the contributing accuser do not have the necessary time to be able to inspect the means of evidence and request exclusion if they so request.

From our particular point of view, we consider that the corresponding records should be generated due to the means of evidence offered by the defense in order to generate legal certainty and that, by presenting themselves within the terms established by this legislation, unnecessary delays are not generated in the criminal process.

That is why in the event that the defense intends to carry out an active defense in the criminal process, it must indicate the means of proof in this document, as well as its relevance, to comply with the formalities that this code requires.

In relation to this fraction, to understand in which cases the accumulation or separation of processes proceeds, it is necessary to attend to what is established in chapter III of this code, which includes from article 30 to article 35 of this law.

The purpose of the evidentiary agreements is to reach an agreement with the counterparty for the purpose of proving certain facts that are not intended to be discussed within the trial, such as in the case of a homicide "the pre-existence of a life", perhaps for the defense in a process for homicide in any of its modalities, it is not part of its strategy to debate whether the person existed.

Article 341. Summons to the hearing.

The control Judge, in the same order in which the Public Prosecutor's accusation is presented, will indicate a date for the intermediate hearing to be held, which must take place within a period that may not be less than thirty nor exceed forty calendar days from the filing of the accusation.

Prior to holding the intermediate hearing, the control judge may, for a single occasion and at the request of the defense, defer the holding of the intermediate hearing for up to ten days. For this purpose, the defense must present the reasons why it has requested said deferral.

Explanation: In practice, the following happens, the prosecution presents the accusation before the control judge, who, upon receiving it, generates the agreement in which he cites an intermediate hearing (oral phase), this hearing must be presented within a period that is not greater thirty, nor more than 60 business days.

When the intermediate oral phase hearing is held, the defense in case of not having up to now the strategy to follow in the process, either because the accused does not know which option to take, or because it is necessary to carry out proceedings to exercise the defense technique or any other incident that causes the hearing not to be held, may only defer the intermediate hearing for one occasion, with the judge

Article 342. Immediacy in the intermediate hearing.

The intermediate hearing will be conducted by the Control Judge, who will preside over it in its entirety and will be held orally. The permanent presence of the Control Judge, the Public Ministry, and the Defender during the hearing is essential.

The victim or offended party or their legal adviser must attend, but their absence does not suspend the act, although if this was unjustified, their claim will be considered withdrawn in the event that they have been constituted as an adjuvant of the Public Ministry.

Explanation: Under the rule in which the hearings are oral, this will not be able to vent if the Judge, the Public Ministry and the Defender are not present.

The legal adviser of the victim or offended party and the victim have the right to attend the hearing to express their claims, however, in the event that they do not attend, it will not be a reason for the hearing to be suspended, and also, in the event of having been notified so that they attended it and do not attend, they will lose their right to establish their claims if they were constituted as coadjuvants (which means having the right to actively present evidence.

Article 343. Union and separation of accusation.

When the Public Prosecutor formulates various accusations that the control judge deems convenient to submit to the same hearing of the debate, and provided that this does not harm the right of defense, he may join them and decree the opening of a single trial, if they are linked by referring to to the same fact, to the same defendant or because the same evidence must be examined.

The Control Judge may issue separate orders for the opening of the trial, for different facts or different defendants that are included in the same accusation, when, if known in a single hearing of the debate, it could cause serious difficulties in the organization or development of the proceedings. the hearing of the debate or affectation of the right of defense, and provided that this does not imply the risk of causing contradictory decisions.

Explanation: The accumulation of accusations can be decreed by the control judge, as long as there is identity in the facts or the same defendant, however, it must be ensured that the right of defense is not touched, in other words, that this procedural act could cause damage to the defendant's defense, either due to procedural benefits or material limitations when exercising the defense.

The same rules shall apply for purposes of separating the accusations.

Article 344. Development of the hearing.

At the beginning of the hearing, the Public Ministry will make a summary presentation of his accusation, followed by the presentations of the victim or offended and the accused by himself or through his Defender; Immediately afterwards, the parties may deduce any incidence that they consider relevant to present. Likewise, the Defense will promote the exceptions that proceed in accordance with what is established in this Code.

Once the points before and after the establishment of evidentiary agreements have been dealt with, the Judge will make sure that the evidentiary discovery by the parties has been complied with and, in case of controversy, will open a debate between them and resolve what is appropriate.

If it is the case that the Public Prosecutor's Office or the victim or offended party concealed evidence favorable to the defense, the Judge in the case of the Public Prosecutor's Office will proceed to give a hearing to his superior for the pertinent effects. In the same way, it will impose a disciplinary correction on the victim or offended party.

Explanation: In the oral phase intermediate hearing, it is very common for it to be deferred because the corresponding argumentation is not prepared or because they are negotiating an abbreviated procedure, conditional suspension of the process or reparation agreement.

When one of the causes mentioned above does not occur, it will be necessary to conduct the intermediate hearing that, at the end, must necessarily issue the order to open the trial. This hearing will therefore begin with the presentation by the public prosecutor of the fact that is the subject of the accusation, authorship and participation, legal classification and the means of proof that are intended to be brought to trial.

Secondly, the legal adviser constituted as a coadjuvant should provide the evidence in his possession for the purpose of guaranteeing the rights of the victim, which will surely be aimed at proving full reparation for the damage.

Thirdly, the defender will be the one who does the same, presenting the means of proof that he has with him for the purpose of proving his probative theory.

In practice, the control judge regularly asks if there is no prior and special ruling incident before dealing with the case (such as a prescription, lis pendens, res judicata, etc.) before the evidence is released.

Subsequently, it is verified if there were evidentiary agreements, these are facts that will be taken for granted within the debate at trial without the need for debate, such as the minority of the victim, which must be accompanied by the means of proof that certify such circumstance for the judge to accept it, such as in this case the birth certificate.

The next step will be to verify if there was evidentiary discovery and if the procedural rules of the same were complied with (see explanation of article 337 to analyze the concept of evidentiary discovery).

Finally, if there is evidence that the public prosecutor concealed some type of evidence that could benefit the defense, the judge must give a view to the hierarchical superior, in the case of the victim, he may impose a measure of urgency.

Article 345. Probative agreements.

Evidentiary agreements are those entered into between the Public Prosecutor's Office and the defendant, without founded opposition from the victim or offended party, to accept as proven one or more of the facts or their circumstances.

If the victim or offended objected, the Control Judge will determine if the opposition is founded and motivated, otherwise the Public Ministry may carry out the evidentiary agreement.

The control Judge will authorize the evidentiary agreement, provided that he considers it justified due to the existence of antecedents of the investigation with which the fact is accredited. In these cases, the control Judge will indicate in the order to open the trial the facts that will be accredited, which must be observed during the hearing of the oral trial.

Explanation: The purpose of the evidentiary agreement is to expedite the trial stage and avoid extending the debate when, due to the fiscal or defensive strategy, it is not intended to debate a point of fact.

A very common example is the case of rape of a minor, very surely the defense will not debate whether the victim is a minor or not, perhaps their effort is focused on proving that they were not responsible for it, that is why that in this case the judge will verify that the birth certificate that proves such circumstance is in the investigation folder.

Article 346. Exclusion of means of proof for the hearing of the debate.

Once the evidence offered has been examined and the parties have been heard, the control judge will order, on grounds, that those evidence that do not directly or indirectly refer to the object of the investigation be excluded from being rendered at the trial hearing. and are useful for the clarification of the facts, as well as those in which any of the following assumptions is actualized:

I. When the means of proof is offered to generate dilatory effects, by virtue of being:

a) Superabundant: for referring to various means of proof of the same type, testimonial or documentary, that prove the same thing, already exceeded, on repeated occasions;

b) Impertinent: for not referring to controversial facts, or c) Unnecessary: for referring to public, notorious or uncontroversial facts;

II. For having been obtained in violation of fundamental rights;

III. Because they have been declared null, or

IV. For being those that contravene the provisions indicated in this Code for its relief.

In the event that the Judge considers that the means of proof is superabundant, he will order that the party that offers it reduce the number of witnesses or documents, when through them he wishes to prove the same facts or circumstances with the matter that will be submitted to trial.

Likewise, in cases of crimes against sexual freedom and security and normal psychosexual development, the Judge will exclude the evidence that he intends to submit regarding the prior or subsequent sexual conduct of the victim. The decision of the Judge of control of exclusion of evidence is appealable.

Explanation: The intermediate hearing serves to purify the means of proof, due to the following rules

a. means of proof that do not refer to the object of the investigation: means of proof that do not pay anything to discredit the accusing theory or to exercise a technical defense.

b. superabundant: presenting various means of evidence that seek to prove the same facts, the most common example is presenting more than two witnesses who come to say exactly the same thing.

c. impertinent: they have nothing to do with the accusation.

d. unnecessary: when it is intended to prove a public fact, for example that legal entities must pay taxes.

e. for having been obtained in violation of fundamental rights: if any means of evidence was obtained in violation of fundamental rights, for example, data collected from a telephone number without a court order, the evidence should be requested to be excluded.

f. For having been declared null: If at any previous procedural stage a piece of evidence was declared null, it will not be able to enter.

g. Because they are those that contravene the provisions indicated in this code for their relief: An example could be that the interview of a witness is offered and not the witness itself, it is obvious that under an oral system this could not be allowed, so the test medium should be excluded.

When the judge indicates that the means of evidence is superabundant, he will allow the party who offered it to choose the means of evidence that he wishes to be entered into the trial, where he regularly allows two.

On the other hand, it is prohibited in sexual crimes to offer evidence for the purpose of proving the prior conduct of the victim.

Lastly, if the judge excludes any evidence, he may file an appeal under the terms provided in this code.

Article 347. Order to open the trial.

Before the end of the hearing, the control judge will issue the order to open the trial, which must indicate:

I. The competent trial court to hold the trial hearing;

II. The individualization of the accused;

III. The accusations that must be the object of the trial and the formal corrections that may have been made in them, as well as the facts that are the subject of the accusation;

IV. The evidentiary agreements reached by the parties;

V. The means of evidence admitted that must be released at the trial hearing, as well as the anticipated evidence;

VI. The means of evidence that, if applicable, must be unburdened at the hearing for the individualization of sanctions and damage reparation;

VII. The measures to safeguard identity and personal data that proceed in terms of this Code;

VIII. The people who must be summoned to the debate hearing, and

IX. The precautionary measures that have been imposed on the accused. The control judge will send the same to the competent prosecution court within five days of being issued and will make the records available to them, as well as to the accused.

TITLE VIII: TRIAL STAGE

CHAPTER I: PRIOR PROVISIONS

Article 348. Trial.

The trial is the decision stage of the essential issues of the process. It will be carried out on the basis of the accusation in which the effective validity of the principles of immediacy, publicity, concentration, equality, contradiction and continuity must be ensured.

Explanation: The so-called "oral trial" is the third and last stage of the ordinary criminal procedure, this must be made up of the oral trial court itself, which must be made up of a judge, or judges, depending on the complexity of the matter, who They have not participated as control judges in any of the preliminary hearings of the process, since if this were to be updated, it would violate the principle of impartiality that must be observed in this process, this since the judge who will hear the oral trial must be impartial and know for the first time the matter of the litigation.

Article 349. Date, place, integration and citations.

Once the trial court receives the order to open the oral trial, it must establish the date for holding the debate hearing, which must take place not before twenty nor after sixty calendar days from the issuance of the decision. court opening order. All parties will be duly summoned to attend the debate. The defendant must be summoned, at least seven days in advance of the start of the hearing.

Explanation: After the oral phase intermediate hearing is completed, the control judge in accordance with the provisions of numeral 347 of this law will issue the order to open the trial.

It will be important to comply with the referred deadlines to comply with the essential formalities of the procedure.

Article 350. Prohibition of intervention.

Judges who have intervened at any stage of the procedure prior to the trial hearing may not serve as Court of Prosecution.

Explanation: The principle of judicial impartiality must be observed at all times during the course of the trial stage, since otherwise it could culminate in the nullity of the proceedings in trial.

This judicial criterion will help to better interpret this article:

PROHIBITION OF INTERVENTION OF THE CONTROL JUDGE. THE CONTAINED IN ARTICLE 350 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, REGARDING THAT ONE WHO HAS INTERVENED IN ANY STAGE OF THE PROCEDURE PRIOR TO THE TRIAL HEARING, CANNOT BE EXTENDED TO

PREVIOUS PROCEDURAL STAGES. The aforementioned precept provides: "Judges who have intervened at any stage of the procedure prior to the trial hearing may not act as trial court." On the other hand, the diverse145, first paragraph, in its second part, of the National Code of Criminal Procedures, establishes: "...Police officers who execute an arrest warrant shall immediately place the detainee at the disposal of the control Judge who issued the order...". From the foregoing, it can be obtained that when an arrest warrant is executed, the detainee will be placed immediately before the Judge who issued said arrest warrant; hence, the fact that the control judge who issued the aforementioned decision presides over the hearings to formulate the accusation and link to the process does not cause any harm to the accused; especially that for the issuance of the arrest warrant, the control Judge will resolve at the hearing exclusively with the presence of the Public Ministry, with due secrecy and will rule on each of the elements raised in the request; and for the issuance of the order of connection to the process, it will take into consideration the evidence offered by the parties and presented at the hearing, since the aforementioned prohibition of intervention, contained in article 350 indicated, consists in the fact that the control Judges who have intervened from the beginning of the procedure and until the issuance of the order to open the trial, they will not be able to prosecute, without it being possible to extend it to previous procedural stages.

CHAPTER II: BEGINNING

Article 351. Suspension.

The trial hearing may be suspended exceptionally for a maximum period of ten calendar days when:

I. An incidental issue must be resolved that cannot, by its nature, be resolved immediately;

Explanation: This fraction broadly establishes any incident that must be resolved and that in turn cannot be resolved at the time of the hearing.

In this case, this argument will be enough to be able to suspend the trial hearing.

It is important to point out that the cases of suspension occur when the debate has already been declared open to trial, something different is when the hearing is deferred for different reasons before the debate hearing is opened, where these deadlines do not run.

II. Any act has to be carried out outside the courtroom, even because there is news of an unexpected fact that makes a complementary investigation essential and it is not possible to carry out the acts in the interval of two sessions;

Explanation: When there is knowledge of any new evidence that there has not been the possibility of having knowledge of it, and that in addition, the acts of investigation to get the evidence to enter the trial cannot be fulfilled in two sessions of the debate at trial, it will be sufficient reason to suspend the hearing.

III. Witnesses, experts or interpreters do not appear, a new subpoena must be issued and it is impossible or inconvenient to continue the debate until they appear, even coercively through the public force;

Explanation: In the event that the witnesses have not appeared even though they have been legally notified, it will be a sufficient argument to suspend the debate.

IV. The member(s) of the trial court, the defendant or any of the parties become ill to such an extent that they cannot continue to intervene in the debate;

Explanation: As the same section refers to, if any member of the trial court develops a health problem, the debate must be suspended until that situation is resolved.

V. The Ombudsman, the Public Ministry or the private prosecutor cannot be immediately replaced in the event of the previous section, or in the event of death or permanent disability, or

Explanation: In the same way as in the previous section, in the event that any of the indicated parties cannot attend for the same reason indicated, the hearing must be suspended.

VI. Some catastrophe or some extraordinary event makes its continuation impossible.

Explanation: In this case, the covid 19 health emergency applies in an excellent way, where work must be stopped to guarantee the health of those involved.

The Prosecution Court will verify the authenticity of the grounds for suspension invoked, being able to gather the corresponding means of evidence to decide on the suspension, for which it must announce the day and time that the hearing will continue, which will have the effect of summons for hearing for all parties. Prior to resuming the hearing, whoever presides over it will briefly summarize the acts previously completed.

Explanation: The trial court has the power to verify and even investigate that the cases of suspension are real, in case of reaching that conclusion, at the time of suspending it, indicate the date and time where the hearing should be held.

The Court of prosecution will order the postponements that are required, indicating the time in which the debate will continue. Weekend rest and non-business days will not be considered a postponement or suspension in accordance with the applicable legislation.

Explanation: The business days according to the rules of this code will be those that are taken into account when establishing the days that the hearing is suspended.

Article 352. Interruption.

If the trial debate hearing is not resumed no later than the eleventh day after the suspension was ordered, it will be considered interrupted and must be restarted before a different trial court and the proceeding will be null and void.

Explanation: In the event that the hearing is interrupted for some of the causes established in numeral 351 and this interruption lasts beyond 10 days, which is what the same article allows, the trial court must restart the debate again. account.

Article 353. Motivation

The decisions of the Prosecution Court, as well as those of its President, will be verbal, with expression of their foundations and reasons when the case requires it or the parties so request, all being notified by its issuance.

Explanation: The justification and motivation of judicial resolutions must prevail as a general rule in the development of the same.

In the event that one of the parties requests that the motivation or foundation of any resolution be explained, and this has not been indicated, the court will have the obligation to do so.

CHAPTER III: DIRECTION AND DISCIPLINE

Article 354. Direction of the trial debate.

The judge who presides over the trial hearing will order and authorize the pertinent readings, make the corresponding warnings, take the legal protests and moderate the discussion; will prevent impertinent interventions or that are not admissible, without restricting the exercise of criminal prosecution or the freedom of defense. Likewise, it will resolve the objections that are formulated during the presentation of the evidence.

If any of the parties in the debate objected to the revocation of a President's decision, it will be resolved by the Court.

Explanation: At all times the trial court, whether single or collegiate, must direct the debate, which means that they are obliged to direct it, following the rules of participation and order of the parties in the debate. trial, control the interrogations, verify that the bases for the incorporation of objects or documents are established, among other litigation techniques.

On the other hand, it must verify the performance and technique of the parties to verify if the criminal prosecution or the defense is being carried out in a technical way, so if it is not, it must make the pertinent indications for them.

The appeal for revocation established in article 465 is the means of challenge applicable to any decision of the court that is intended to be challenged.

Article 355. Discipline in the hearing.

The judge who presides over the trial hearing will ensure that discipline is respected in the hearing, taking care that order is maintained, for which he will request the trial court or the assistants, the due respect and considerations, correcting the faults on the spot. that are committed, for which it may apply any of the following measures:

I. Warning;

II. Fine of twenty to five thousand minimum wages;

III. Expulsion from the courtroom;

IV. Arrest for up to thirty-six hours, or

V. Public eviction from the courtroom.

If the offender were the Public Prosecutor, the defendant, his Defender, the victim or offended party, and it is necessary to expel them from the courtroom, the applicable rules will be applied in the case of their absence.

In the event that order cannot be restored despite the measures adopted, the person presiding over the hearing will suspend it until the conditions that allow it to continue with its normal course are met.

The Prosecution Court may order the arrest for up to thirty-six hours before the default of the procedural obligations of the persons involved in a criminal proceeding that violate the principle of continuity, derived from their unjustified failure to appear at the hearing or those acts that prevent that the tests can be unburdened in a timely manner.

Article 356. Probationary freedom.

All the facts and circumstances provided for the proper solution of the case submitted to trial, may be proven by any pertinent means produced and incorporated in accordance with this Code.

Explanation: This article is of the utmost importance in order to understand a basic principle of the accusatory process.

That is to say, any factual point or proposition can be proven with any evidence, without neglecting the fact that evidently each evidence may have more or less probative force than others, less or more credibility, among other points that must be proven.

For example, to prove the ownership of a vehicle, without a doubt the invoice of the same (documentary) will be the ideal proof to prove it, although this does not mean that it can be proven in another way, such as with testimonials, although obviously this way of proving will have more weaknesses and points to attack than the other already indicated.

Article 357. Legality of the test.

The evidence will have no value if it has been obtained through acts that violate fundamental rights, or if it was not incorporated into the process in accordance with the provisions of this Code.

Explanation: When evidence that has been obtained through violation of fundamental rights or violation of formalities is incorporated into the trial, it should not be assessed by the trial court.

In closing arguments, the party that has been affected by the incorporation of this information must justify to the court the reasons and motives for which this evidence is void or formalities, and if the arguments convince the court, it must issue its sentence without taking into account what that test flawed nullity embodied.

Article 358. Opportunity to receive evidence.

The evidence that would serve as the basis for the sentence must be released during the trial debate hearing, except for the exceptions expressly provided for in this Code.

Explanation: The natural rule of the process is that the essential issues of the process are debated in court, however there may be exceptions, such as early evidence, which will have probative value in court and has not yet been presented in it.

Article 359. Assessment of the evidence.

The Prosecution Court will assess the evidence in a free and logical manner, it must refer to all the evidence presented, including those that have been rejected, in the reasoning it carries out, indicating the reasons for doing so. The motivation will allow the expression of the reasoning used to reach the conclusions contained in the jurisdictional resolution. The defendant may only be convicted if his guilt is found beyond a reasonable doubt. In case of reasonable doubt, the trial court will acquit the accused.

Explanation: The trial court at the time the evidence was presented and the closing arguments issued must assess the evidence using the rules of logic, that is, it must always make a probability analysis where the judge infers what happened in based on what the test says.

Likewise, the court must take charge of the evidence that it decided not to assess, as well as the grounds and reasons why it decided not to do so.

This judicial criterion will help to better interpret this article:

EVIDENCE IN THE ACCUSATORY CRIMINAL PROCEDURE SYSTEM. ITS FREE AND LOGICAL ASSESSMENT BY THE COURT IN TERMS OF ARTICLE 20, SECTION A, SECTION II, OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES.The assessment of the evidence constitutes the decision-making phase of the evidentiary procedure, since it is the judicial pronouncement on the conflict submitted to prosecution. It is regularly defined as the jurisdictional activity by virtue of which the judge, by means of some valuation method, assesses the evidence, delimiting its content, in order to establish whether certain facts have been proven or not, having to explain such process in the sentence and the obtained result. For this reason, theoretical valuation systems have been created, distinguishing between legal or assessed evidence, as well as free and mixed evidence, which make it possible to determine the existence of a fact that has been proven or the lack of evidence. Starting from the constitutional reform in matters of criminal justice and public security, published in the Official Gazette of the Federation, on June 18, two thousand and eight, the elements for an accusatory and oral criminal process were introduced, highlighting the modification to the article20 of the Political Constitution of the United Mexican States, in which the corresponding guidelines were established. Section II of section A of said constitutional precept, essentially provided that the presentation and evaluation of

the evidence in the new process falls exclusively on the Judge, which must be carried out freely and logically. In this sense, under the new perspective of the accusatory criminal process, the Constituent Assembly considered that the evidence did not have a previously assigned legal value, but that the guidelines would focus on observing the rules of logic, scientific knowledge and the maxims of experience. , without the judge having absolute freedom that implies arbitrariness on his part (intimate conviction), but rather such power must be limited by sound criticism and the logical way of evaluating them. In this perspective, the main point of said assessment will be the objective justification that the judge makes in the sentence regarding the scope and probative value that he confers on the evidence to motivate his decision.

Article 360. Duty to testify.

Every person will have the obligation to attend the process when summoned and to declare the truth of what they know and are asked; Likewise, it must not hide facts, circumstances or any other information that is relevant to the solution of the dispute, unless otherwise provided.

The witness will not be obliged to testify about facts for which he can be held criminally responsible.

Explanation: Within the practice of the accusatory system, it is the obligation of any person who is recognized as a witness, even if he claims to know nothing about the facts, for the purposes of attending a hearing and declaring and answering the questions that are asked for the purposes of clarify the facts.

If there is any type of question that could entail some criminal responsibility, such as affirming that he was the one who murdered someone or stole some property, he will not be obliged to answer, since although the simple confession does not have the necessary elements to to be able to establish criminal responsibility, it is a constitutional right not to testify against oneself.

Article 361. Faculty of abstention.

They may refrain from declaring the guardian, curator, ward, spouse, concubine or cohabitant of the accused, the person who has lived permanently with the accused for at least two years prior to the fact, his relatives by blood in the straight line ascending or descending up to the fourth degree and in the collateral by consanguinity up to the second degree inclusive, unless they were complainants.

You must inform the aforementioned persons of the right to abstain before declaring, but if they agree to give testimony they cannot refuse to answer the questions asked.

Explanation: Even knowing the facts that could be relevant in the commission of a crime, if a witness who has a degree of kinship with the accused of any of those marked above decides not to testify, the trial court must protect that right and prevent their testimony from being released in court.

If, even knowing his right to abstain, the witness decides to testify, the testimony must be unburdened.

Article 362. Duty to keep secret.

It is inadmissible the testimony of people who, regarding the object of their statement, have a duty to keep secret because of the knowledge they have of the facts by reason of their trade or profession, such as religious ministers, lawyers, human rights visitors, doctors, psychologists, pharmacists and nurses, as well as public officials on information that is not subject to disclosure according to the laws of the matter. However, these people may not deny their testimony when they are released by the interested party from the duty to keep secret.

In case of being summoned, they must appear and explain the reason for the obligation to keep secret and to refrain from declaring.

Explanation: The only way in which the testimony is endowed with legality and it becomes mandatory to incorporate your testimony in a trial is when it is released by the person empowered to generate that release.

Example: In the hypothetical case that there is a need to know the Coca-Cola formula, in this case the person who can release the secret is the person who appears before the registration authority in matters of industrial and intellectual property and patents, if this person authorizes it, that information can be incorporated.

Article 363. Summons witnesses.

Witnesses will be summoned for examination. In urgent cases, they may be summoned by any means that guarantees receipt of the summons, which must be recorded. The witness may appear to testify without a prior appointment.

If the witness resides in a place far from the seat of the judicial body and lacks financial means to travel, what is necessary will be arranged to ensure his appearance.

In the case of witnesses who are public servants, the agency in which they work will adopt the corresponding measures to guarantee their appearance, in which case it will also absorb the expenses that are generated.

Explanation: The witness only has the legal obligation to attend the hearing when he has been duly notified to appear at it, so only in case of urgency can he be notified by any means, such as a phone call or an email, that with this he helps and guarantees that he has received the information and guarantees that he will attend the hearing.

Article 364. Obligatory appearance of witnesses.

If the duly summoned witness will not appear for the summons or there is a well-founded fear that he will be absent or hide, he will be made to appear at that act by means of the public force without the need to exhaust any other means of urgency.

The authorities are obliged to promptly and diligently assist the Tribunal to guarantee the compulsory appearance of witnesses. The Judicial Body may use against the authorities the means of enforcement established by this Code in case of non-compliance or delay in its determinations.

Article 365. Exceptions to the obligation to appear.

They will not be obliged to appear in the terms provided in the previous articles and may declare the following in the manner indicated for special testimonies:

I. Regarding federal public servants, the President of the Republic; the Secretaries of State of the Federation; the Attorney General of the Republic; the Ministers of the Supreme Court of Justice of the Nation, and the Deputies and Senators of the Congress of the Union; the Magistrates of the Electoral Tribunal of the Federal Judiciary and the Counselors of the Federal Electoral Institute;

II. Regarding state public servants, the Governor; the Secretaries of State; the Attorney General of Justice or his equivalent; the Deputies of the local Congresses and members of the Legislative Assembly of the Federal District; the Magistrates of the Superior Court of Justice and the State Electoral Court and the Counselors of the state Electoral Institute;

III. Foreigners who will enjoy diplomatic immunity in the country, in accordance with the Treaties on the matter, and

IV. Those who, due to serious illness or other impediment qualified by the Court, are unable to do so. If the persons listed in the previous sections waived their right not to appear, they must give a statement in accordance with the general rules provided in this Code.

Explanation: All public servants that are indicated in this article do not have the obligation to appear at the hearing.

In order to be able to collect their testimony, the process indicates that it must be collected through any audiovisual technique, such as a zoom video call, in accordance with the provisions of article 366 of this code.

Likewise, the procedure will be as follows: if, for example, a senator is summoned to testify, he must connect to the application indicated by the court (zoom, google meet, etc.) for the purpose of proceeding to testify about the facts that are included in the process, likewise the parties (prosecutor, defender, legal adviser) who will have the right to question the parties will be connected to this hearing.

Article 366. Special testimony.

When testimony must be received from minor victims of the crime and it is feared because of their psychological or emotional affectation, as well as in the case of victims of the crimes of rape or kidnapping, the Court, at the request of the parties, may order its reception with the help of relatives or specialized experts. To this end, the appropriate audiovisual techniques must be used to help avoid confrontation with the accused.

People who cannot attend the judicial headquarters, due to being physically handicapped, will be examined in the place where they are and their testimony will be transmitted by remote reproduction systems.

These special procedures must be carried out without affecting the right to confrontation and defense.

Explanation: The general rule in criminal proceedings is that witnesses and experts appear before the judge to testify about what they know and are aware of before the judge.

However, there are cases where it is of greater value to care for vulnerable groups from possible re-victimization (minors subjected to tough questions that can cause some psychological trauma or people who have experienced a kidnapping firsthand and who, upon seeing a their kidnappers in front cause affectations for remembering what they experienced), for these cases the criminal process has established an exception to the rule, where they can give their testimony by video call.

The legal effects of your declaration will be the same as if you had personally attended the hearing.

Article 367. Protection of witnesses.

The Court, for a reasonable time, may order special measures to protect the physical and psychological integrity of the witness and their relatives, which may be renewed as many times as necessary, without prejudice to the provisions of the applicable legislation.

In the same way, the Public Ministry or the corresponding authority will adopt the appropriate measures to grant due protection to victims, offended parties, witnesses, before or after giving their statements, and to their relatives and in general to all the subjects that intervene. in the procedure, without prejudice to the provisions of the applicable legislation.

Explanation: It is common that in criminal proceedings, and mostly where the defendants are people belonging to organized crime, they have both personal and financial structures that can intimidate witnesses or people who can testify against these people.

Faced with these situations, the judge, or, as the case may be, the public prosecutor, may order their protection through mandates to agencies in charge of providing security such as municipal police, or even state police, for the purpose of protecting their integrity.

For this, it will be necessary that in the event of a danger, it will be necessary to prove before the judge, or the public prosecutor, what were the threats or actions that were carried out against the witnesses that led to request this type of protection.

SECTION II: EXPERT EVIDENCE

Article 368. Expert evidence.

Expert evidence may be offered when, for the examination of persons, facts, objects or circumstances relevant to the process, it is necessary or convenient to possess special knowledge in any science, art, technique or trade.

Explanation: The purpose of the expert evidence is to generate technical conclusions on the examination of relevant facts, persons or circumstances within the criminal process.

The form of relief of this test is carried out by going to the expert who issued the conclusions of the expert opinion to the audience, who orally, based on questions from the person who offered it, explained the details and how he reached the conclusions that he affirms in his expertise.

This judicial criterion will help to better interpret this article:

EXPERT EVIDENCE IN THE ACCUSATORY CRIMINAL SYSTEM. IT SHOULD BE ASSESSED BASED ON WHAT THE EXPERT STATEED AT THE ORAL TRIAL HEARING, AS A PRODUCT OF THE INTERROGATION AND COUNTER-EXAMINATION CARRIED OUT BY THE PARTIES, AND NOT ON THE WRITTEN VERSION OF THE RESPECTIVE OPINION (LEGISLATION OF THE STATE OF CHIHUAHUA).The First Chamber of the Supreme Court of Justice of the Nation, in the isolated thesis 1a. CLXXVI/2016 (10a.), title and subtitle: "ACCUSATORY AND ORAL CRIMINAL PROCESS. IN THIS COURT, ONLY THOSE PUBLICLY DISCLAIMED BEFORE THE COURT, IN THE PRESENCE OF THE PARTIES, CAN BE REPUTED AS EVIDENCE.", established that the accusatory and oral criminal procedure system, governed by the principles of publicity, contradiction, concentration, continuity and immediacy, is based on a hearing methodology, whose guiding principles are established in article20 of the Political Constitution of the United Mexican States, reason for which, the logic of the evidence changes with respect to the traditional or mixed system, since for the former only those publicly presented before the respective court, in the presence of the parties, can be considered as such -except for the so-called anticipated evidence-, which implies that the issuance of sentences must be based on elements of conviction received directly by the oral trial court, under horizontal control, with full satisfaction of the aforementioned principles. In this order of ideas, if it is about the incorporation of the expert evidence in the trial hearing, what the expert states about his expert opinion, product of the interrogation and cross-examination carried out by the parties, is what he has to freely assess. and logically the court, not the written version of the expert opinion, since what the expert exposes out loud about the reasons, studies or experiments that led him to conclude his expert opinion, is what must be valued when passing sentence, in accordance with articles297, penultimate paragraph and 361 of the Code of Criminal Procedures of the State of Chihuahua, applicable until June 12, 2016, by virtue of the declaration of entry into force of the National Code of Criminal Procedures.

Article 369. Official title.

The experts must have an official degree in the matter relating to the point on which they will rule and have no impediments to professional practice, provided that the science, art, technique or trade on which the expertise in question is regulated; Otherwise, a person of manifest suitability must be appointed and who preferably belongs to a union or group related to the activity on which the expertise is to be seen.

These requirements will not be required for those who testify as a witness about facts or circumstances that they knew spontaneously, even if they use the special skills they possess in a science, art, technique or trade to report on them.

Explanation: Every expert must have a title that certifies his expertise, for example, only a graduate in medicine may issue a certificate of physical integrity, or an accountant may issue accounting opinions.

On the other hand, in the event that special skills are needed for the purpose of issuing a technical opinion but an official title is not required, such as a mechanic, the latter may appear at a hearing to explain his conclusions.

Article 370. Protection measures.

If necessary, the experts and other third parties who must intervene in the procedure for evidentiary purposes, may request the corresponding authority to adopt measures aimed at providing them with the protection provided for witnesses, under the terms of the applicable legislation.

Explanation: It may happen that experts or witnesses with special aptitudes have received some type of threat or some indication that suggests that their safety is in danger, which is why they will have the right to request that the authority provide protection for them. in order to guarantee their safety, and in turn guarantee that they can go to trial to give their testimony.

SECTION III: GENERAL PROVISIONS OF INTERROGATION AND CROSS-EXAMINATION

Article 371. Declarants at the trial hearing.

Before declaring, the witnesses will not be able to communicate with each other, nor see, hear or be informed of what happens in the hearing, so they will remain in a different room from the one where it takes place, warned of the above by the judge who presides over the audience. They will be called in the established order. This provision does not apply to the defendant or the victim, except when the latter must testify as a witness in court.

The judge who presides over the trial hearing will identify the expert or witness, will take a protest to conduct himself truthfully and will warn him of the penalties that are imposed if false statements are made.

During the hearing, the experts and witnesses must be personally questioned. Your personal statement may not be substituted by reading the records containing previous statements, or other documents that contain them, and you should only refer to it and to the questions asked by the parties.

Explanation: Witnesses should not listen to the testimonies of other witnesses nor should they communicate with each other. This logic stems from the need for anyone who has witnessed a relevant event to declare what he or she witnessed, avoiding listening to other witnesses who could incur in changing their perception of what they know, or even that a witness who has some special interest or motive in the sense of the ruling that the trial court could issue intends to influence another witness about what they will recount in court.

The judge must always let the witnesses and experts know that if they make false statements, they may commit a crime.

Article 372. Development of interrogation.

Once the protest has been granted and their identification has been made, the judge who presides over the trial hearing will grant the floor to the party who proposed the witness, expert or defendant for questioning, and subsequently to the other subjects involved in the process, respecting Always the assigned order. The opposing party may immediately cross-examine the witness, expert or accused.

Witnesses, experts or the defendant will respond directly to the questions formulated by the Public Prosecutor's Office, the Defender or the Legal Adviser of the victim, as the case may be. The Court must refrain from interrupting said interrogation unless there is a well-founded objection on the part of the party, or it is necessary to maintain the order and decorum necessary for the due diligence of the hearing. Notwithstanding the foregoing, the Court may ask questions to clarify what was stated by the person deposing, under the terms provided in this Code.

At the request of some of the parties, the Court may authorize a new interrogation of the witnesses who have already testified at the hearing, as long as they have not been released; The expert may be asked questions in order to propose hypotheses on the matter of the expert opinion, to which the expert must respond in accordance with science, the profession and the proposed hypothetical facts.

After cross-examination, the offeror may cross-examine the witness in relation to what was stated. In the matter of cross-examination, the opposing party may cross-examine the witness regarding the matter of the questions.

Explanation: The interrogations will begin with the party who proposed the witness, that is, who offered it to suit the interests of his theory of the case.

The process is the following:

1. The judge asks the witness officer to take the witness to the stand.

2. The witness sits on the bench.

3. The judge tells you that you must conduct yourself with true information, since if you do not do so you commit a crime (false statement), then he tells you that if you do not understand any of the questions, take a pause or ask so that they can clarify it.

4. The offeror of the witness begins to question him through a direct examination through open or closed questions but in no way suggestive, or failing that through an open story.

5. At the end of the interrogation, the counterparty has the right to ask questions in cross-examination, which could ask leading questions, that is, suggesting the answer.

6. At the end of this process, the judge asks the parties if they release the witness or not, so if the witness is released, he does not have to appear again, otherwise he is not released, he will have to appear if he returns to be called by one of the parties.

Article 373. Rules for asking questions in court.

All questions must be formulated orally and will be about a specific fact. In no case will ambiguous or unclear, conclusive, impertinent or irrelevant or argumentative questions be allowed, which tend to offend the witness or experts or which are intended to coerce them.

Leading questions will only be allowed to the counterpart of the person who offered the witness, in cross-examination.

Explanation: The rules when questioning a witness are the following:

The provider of the evidence, that is, the person who offered the witness, must ask about a specific fact, they must be clear and generate the question starting with a what, who, when, how, with what, why and any question that invites the witness to develop the answer.

The person offering the witness is prohibited from asking suggestively, that is, including the answer within the question.

This way of asking is only allowed in cross-examination.

Article 374. Objections.

The objection of questions must be made before the witness issues a response. The Judge will analyze the question and its objection and in case of considering the origin of the question obvious, he will decide flatly. No appeal is allowed against this determination.

Explanation: Within the practice, it is important as a counterpart to be aware of the development of the interrogation, in order to be able to object to the questions when appropriate.

It is a strategic question to object to asking, since from our point of view it is not about objecting to questions that have no relevance to the theory of the case that you intend to carry out, that is, what does it matter if a suggestive question is asked about a question that doesn't hurt your theory of the case?

That is why you will also give a good image in court if you do not object to any type of question, since this reflects that you know your case, the points you wish to discuss, and that you are not hindering the course of the trial.

Article 375. Hostile witness.

The trial court will allow the provider of the evidence to ask leading questions when it notices that the witness is conducting himself in a hostile manner.

Explanation: The witness's hostility occurs when he tries to avoid the questions, or when he answers the questions with other questions.

Regularly this assumption will occur when the party opposing the offeror summons one of his witnesses to testify in relation to what he knows of the facts, it is within this scenario where the offering lawyer may ask leading questions.

When the witness stops acting in a hostile manner, the provider of the evidence must immediately carry out the interrogation under the established rules.

Article 376. Reading to support memory or to demonstrate or overcome contradictions in hearing.

During the interrogation and cross-examination of the accused, the witness or the expert, they may read part of their interviews, previous statements, documents prepared by them or any other record of acts in which they have participated, making any type of statement, when necessary to support the memory of the respective declarant, overcome or demonstrate contradictions, or request the pertinent clarifications.

With the same purpose, part of the report that he may have prepared can be read during the statement of an expert.

Explanation: During the process, records are generated, these are the statements presented by the witnesses or experts before the prosecutor's office, the approved police report that the police officers present before the prosecutor's office, the statements that the witnesses or experts could have made in a hearing related to process, among others.

All of the above can be used when examining a witness, which can serve to help them remember facts that they have declared in those interviews, or even make them fall into contradictions, for having declared something different in audience to what they had said previously in previous statements.

Obviously, the indiscriminate use of these statements can affect the value of the testimony, since excessive memory refresh, even more so in things that are difficult to forget, or on the other hand, the excess of contradictions evidenced in a witness, therefore that performing these exercises will become a strategic decision on the part of whoever uses them.

SECTION IV: defendant's statement

Article 377. Statement of the accused in trial.

The defendant may make his statement at any time during the hearing. In such a case, the judge presiding over the hearing will allow him to do so freely or answer the questions of the parties. In this case, previous statements made by the defendant may be used to support memory, demonstrate or overcome contradictions. The Court body may ask you questions to clarify what you said.

The defendant may request to be heard, in order to clarify or complement his statements, provided that he preserves discipline in the hearing.

In the defendant's statement, the same rules for the development of the interrogation will be followed, where applicable. The defendant must testify with freedom of movement, without the use of security instruments, except when it is absolutely essential to prevent his escape or damage to other people.

Explanation: Historically, the defendant's statement has been avoided by the defendants' defense attorneys, since the burden of proof is on the public prosecutor's office, however, on many occasions it is strategic that it be released.

Let us remember that the defendant has the constitutional right to remain silent, so no one can force him to testify, if he wishes to do so, so his testimony can be useful if his testimony can be corroborated with other evidence that helps to prove the defensive theory.

Article 378. Absence of the accused in trial.

If the defendant decides not to testify at trial, any previous statements that he has rendered may not be incorporated into the trial as evidence, nor may they be used at trial under any circumstances.

Article 379. Rights of the accused in trial.

In the course of the debate, the defendant will have the right to request the floor to make all the statements he deems pertinent, even if he had previously refrained from making a statement, as long as they refer to the subject of the debate.

The judge presiding over the trial hearing will prevent any digression and if the defendant persists in this behavior, he may order that he be removed from the hearing. The accused may, during the course of the debate, speak freely with his Defender, without the hearing being suspended; however, you will not be able to do so during your statement or before answering questions that are asked, and you will not be able to accept any suggestion.

SECTION V: DOCUMENTARY EVIDENCE AND MATERIAL

Article 380. Concept of document.

Any material support containing information about a fact will be considered a document. Whoever questions the authenticity of the document will have the burden of proving their claims. The Court, at the request of the interested parties, may dispense with the full reading of documents or written reports, or the total reproduction of a video recording or recording, to read or partially reproduce the document or recording in the relevant part.

Explanation: For the purposes of this code, a document is any tangible element that contains information about a fact that is related to the criminal process that is being carried out.

A civil sentence, a birth certificate, any of these examples can be considered a document.

In practice, at the request of the party that is going to incorporate it, only part of the documents can be read, or some part of a video can be reproduced, for example, in a civil sentence, only the resolutions can be read, which is common and legal, since the counterparty has the complete document with them, so if they wanted to include additional information, they could also do so.

Article 381. Reproduction in technological means.

In the event that the test data or evidence is contained in digital, electronic, optical or any other technology media and the Court does not have the necessary means for its reproduction, the party that offers them must provide or facilitate them. . When the offering party, prior warning, does not provide the suitable means for its reproduction, it will not be possible to carry out the relief of the same.

Explanation: Generally, the court has the necessary hardware and software to carry out the reproduction of evidence stored in technological media.

Only in the event that the offeror needs other technology to incorporate evidence, such as special software being necessary to be able to decode a document, is that in this case the offeror must provide it, so that the court is not takes charge of it.

Article 382. Prevalence of the best document.

Any document that guarantees to improve the fidelity in the reproduction of the contents of the tests must prevail over any other.

Explanation: This article is closely related to the evaluation of the evidence, so if there are two or more documents that speak about the same point to prove, the one that guarantees and creates the greatest conviction must be evaluated.

It is important to remember that in the system of free assessment of evidence, a document, because it is public, does not necessarily mean that the information contained in it is true and indisputable, which is why even public documents can be refuted and disputed by the parties.

Article 383. Incorporation of evidence.

The documents, objects and other elements of conviction, prior to their incorporation into the trial, must be exhibited to the accused, to the witnesses or interpreters and to the experts, so that they recognize them or report on them.

Only that which has been previously accredited may be incorporated into the trial as material or documentary evidence.

Explanation: Regarding oral litigation techniques, it is important to mention that the documents do not speak for themselves, but that they were made by someone, collected by someone, videotaped by someone, worked on by someone, etc.

That someone is the person who must explain them to the court, point out that they contain these documents and what they mean, so that after proving the material or documentary support in question, they may join the trial, so that the witness or the expert continue with his testimony.

This judicial criterion will help to better interpret this article:

DOCUMENTARY AND MATERIAL EVIDENCE IN THE ACCUSATORY CRIMINAL SYSTEM. TO BE CONSIDERED VALID, THEY MUST BE INCORPORATED IN TERMS OF THE ARTICLE383 OF THE NATIONAL CODE OF CRIMINAL PROCEDURES. The aforementioned precept establishes that, prior to their incorporation into trial, the documents, objects and other elements of conviction must be exhibited to the defendant, to the witnesses or interpreters and to the experts, so that they recognize them or report on them, because they can only be brought to trial if they have been previously accredited. Consistent with this provision, in the accusatory criminal system, these instruments, by themselves, are not suitable to account for their origin and nature, but must be accredited by recognizing those who participated in their preparation or location, so that are incorporated into the trial as valid evidence and the court can take them into consideration. In this sense, the party that wishes to incorporate a document or object into the trial must follow the following steps: 1) choose a witness or expert who recognizes them, such as the person or police agent who located the first or who participated in it; the elaboration of the second, for example, the expert who rendered the opinion; 2) once the witness or expert narrates the facts that are known to him and those related to the object or document, it must be shown to him so that he recognizes it, that is, to prove it; 3) at the time of accreditation of the respective instrument, the deponent must express the reasons for which he recognizes it; 4) later, the object or document must be shown to the opponent; and, 5) once the above has been done, upon express request of the interested party, the relative means of

conviction can be incorporated into the trial; therefore, up to this moment it constitutes a valid proof that the judge will be able to assess in due course.

Article 384. Prohibition of incorporation of procedural records.

It will not be possible to invoke, read or admit or vent as a means of evidence to the debate any antecedent that is related to the proposal, discussion, acceptance, origin, rejection or revocation of a conditional suspension of the process, of a reparation agreement or the processing of an abbreviated procedure.

Explanation: The trial court must take care of its impartiality when it comes to assessing the evidence, which is why it is unacceptable to try to incorporate information that is related to an alternative exit or an abbreviated procedure.

Article 385. Prohibition of reading and incorporation into the trial of investigation records and documents.

Records and other documents that account for actions carried out by the Police or the Public Ministry in the investigation may not be incorporated or invoked as evidence or read during the debate, except in the cases expressly provided for in this Code. .

They may not be incorporated as a means of proof or read out minutes or documents that account for actions declared null or in which fundamental rights have been violated.

Explanation: At the trial stage, the source of the evidence must appear, that is, the policeman who made the arrest, the expert who examined the bullet, etc., to comply with the principle of orality in the process.

In the same way, if previously, before the order to open an oral trial, the annulment of any action by the parties was decreed, it may not be incorporated into the trial.

Article 386. Exception for the incorporation by reading of previous declarations.

Records containing previous statements or reports from witnesses, experts or defendants may be incorporated into the trial, only in the following cases:

I. The witness or co-defendant has died, has a temporary or permanent mental disorder or has lost the ability to testify in court and, for that reason, it would not have been possible to request early relief, or

II. When the non-appearance of the witnesses, experts or co-defendants, is attributable to the accused. Any of these circumstances must be duly accredited.

Article 387. Incorporation of material or documentary evidence previously admitted.

In accordance with the previous article, only material and documentary evidence previously admitted may be incorporated, except for the exceptions provided for in this Code.

SECTION VI: OTHER TESTS

Article 388. Other tests.

In addition to those provided for in this Code, other tests may be used when fundamental rights are not affected.

Explanation: Any means of conviction that can support the clarification of the criminal act or that provides information to strengthen the victim or defensive theory can be incorporated into a trial, so the only limitation for this is that obtaining it has not violated Fundamental rights.

The most common examples are a statement obtained by means of torture, the seizure of property within a home without the proper permission of the person who by law can grant it or with a search warrant in hand, to name a few.

Article 389. Constitution of the Court in a different place.

When so requested by the parties for the proper assessment of certain relevant circumstances of the case, the Court of prosecution may be established in a place other than the courtroom.

Article 390. Means of new evidence and rebuttal.

The trial court may order the receipt of new evidence, either on supervening facts or those that were not offered in a timely manner by any of the parties, provided that it is justified not to have previously known of their existence.

If, on the occasion of the rendering of a means of proof, it suggests a controversy related exclusively to its veracity, authenticity or integrity, the Court of prosecution may admit and release new means of proof, even if they have not been offered in a timely manner, provided that it has not been possible to anticipate its need.

The means of proof must be offered before the debate is closed, for which the trial court must safeguard the opportunity of the counterpart of the offeror of the supervening means of proof or rebuttal, to prepare the cross-examination of witnesses or experts, as the case may be, and to offer the practice of various means of proof, aimed at disputing them.

Explanation: There are two types of evidence that can be offered extemporaneously, that is, after the term established by law to offer them, which are the following.

1. ***Supervening evidence: this arises when a new event arises after the closing of evidence and the offering of evidence.***

As an example, we can point out a case of qualified injuries, where the victim was attacked with a knife, was in a coma for some time and later, days before the trial, she died. Under this analysis, an autopsy will have to be carried out to determine the causes of death, and precisely this expert opinion carried out on the body will

be important to incorporate into the trial, this case would be an example of supervening evidence.

2. ***When its existence has not been previously known: This type of evidence presents more problems at the time of its incorporation, since in this case the judge will have to be very diligent in reviewing the circumstances of how it was discovered, since defects in research cannot***

CHAPTER V: DEVELOPMENT OF THE TRIAL HEARING

Article 391. Opening of the trial hearing.

On the day and time set, the Court of prosecution will be constituted in the place indicated for the hearing. Whoever presides over it will verify the presence of the other judges, the parties, the witnesses, experts or interpreters who must participate in the debate and the existence of the things that must be exhibited in it, and will declare it open. Advise the defendant and the public of the importance and significance of what will occur at the hearing and instruct the defendant to watch for it.

When a witness or expert is not present at the start of the hearing, but has been duly notified to attend at a later time and it is certain that they will appear, the debate may begin.

The judge presiding over the trial hearing will indicate the accusations that must be the subject of the trial contained in the order of its opening and the evidentiary agreements reached by the parties.

Article 392. Incidents at the trial hearing.

The incidents promoted during the trial debate hearing will be resolved immediately by the Trial Court, unless due to their nature it is necessary to suspend the hearing. The decisions that fall on these incidents will not be subject to any appeal.

This judicial criterion will help to better interpret this article:

***INCIDENTS IN THE ORAL TRIAL STAGE OF THE ACCUSATORY CRIMINAL SYSTEM. IF THEY WERE NOT PROMOTED BY ANY OF THE PARTIES, THE TRIAL COURT LACKS THE POWERS TO OPEN THEM EX OFFICIO.Article392, first paragraph, of the National Code of Criminal Procedures provides: "Incidents promoted during the trial debate hearing will be resolved immediately by the trial court, unless by their nature it is necessary to suspend the hearing.", whose wording is noted that it is not a power of the resolver of the trial to establish incidents "informally" in the oral trial stage, but this corresponds solely to the parties, because they -and not the Judge- are the ones who can promote before the court, the actions, incidents or legal means that they deem pertinent, to adequately erect their defenses, while the judge is there to resolve the arguments presented by them. The foregoing, in attention to the principles of contradiction and equality that govern the accusatory and oral criminal system, which according to these, only the court may settle what the parties question in hearing, while all the people involved in criminal procedure will receive the same treatment and will have the same opportunities to support the prosecution or the defense in the full and unrestricted exercise of their rights, in accordance with articles6, 10 and 11 of the code itself. Due to the foregoing, the trial court cannot "ex officio" incorporate into the debate, incidents not raised by any of the parties, since, otherwise, there is a risk of generating procedural inequality, benefiting one of the parties. them and*

harming another, which could affect the correct demonstration of their corresponding "theories of the case".

Article 393. Division of the single debate.

If the accusation has as its object several punishable acts attributed to one or more defendants, the Trial Court may provide, even at the request of a party, that the debates be carried out separately, but continuously.

The Court of prosecution may order the division of a debate at that time and in the same way, when it is convenient to adequately decide on the sentence and for a better defense of the accused.

Explanation: It is common that when there is a trial where criminal proceedings have been accumulated or in the case of a contest of crimes, due to procedural technique or even due to defense strategy, there is a need for debate to be generated fact by fact, with the effects to give coherence to the arguments and debates between the parties.

Article 394. Opening arguments.

Once the debate has been opened, the judge who presides over the trial hearing will grant the floor to the Public Ministry so that it can present the accusation in a concrete and oral manner and a summary description of the evidence that it will use to prove it. Immediately afterwards, the floor will be granted to the legal adviser of the victim or offended party, if any, for the same effects. Subsequently, the Ombudsman will be offered the floor, who will be able to express what is in the interest of the accused in concrete and oral form.

Explanation: At the beginning of the trial, the unitary judge or collegiate trial court has no knowledge of the facts or the defense strategies, let us remember that they are judges who did not participate in any of the previous hearings of the aforementioned criminal process, it is in this sense that the Opening arguments have the purpose of presenting the case to the judge on the facts that are the subject of the accusation and how they intend to prove them.

Article 395. Order of receipt of evidence at the trial hearing.

Each party will determine the order in which it will present its means of proof. It corresponds to first receive the means of proof admitted to the Public Ministry, then those of the victim or offended of the crime and finally those of the defense.

Explanation: After the opening arguments were made, it will be the turn of the witnesses, experts and documents that were offered in the oral phase intermediate hearing and that must appear in the opening order to trial.

The judge will give the opportunity to each of the parties so that the parties determine the order in which they will present their witnesses.

This is precisely due to respecting the litigation strategy of each one of the parties, such as the defense may decide to take the stand as the first witness who affirms that everything is a fabrication of evidence by the prosecution, since this It generates impact and that the judges pay attention to what it points out.

Article 396. Orality in the trial hearing.

The trial hearing will be oral at all times.

Explanation: A very simple article to understand, at all times the trial must be carried out orally, that is, no action within it, or any session of the same trial may be carried out through written debate.

Article 397. Decisions at the hearing.

The determinations of the trial court will be issued orally. In the hearings, the legal action of the parties and the Court is presumed, so it is not necessary to invoke the legal precepts on which they are based, except in cases in which during the hearings one of the parties requests the express justification of the party. contrary or of the judicial authority because there is doubt about it. Written resolutions must invoke the precepts on which they are based.

Article 398. Legal reclassification.

Both in the opening and closing arguments, the Public Prosecutor's Office may propose a reclassification with respect to the crime invoked in its indictment. In this case, the judge presiding over the hearing will give the accused and his Defender the opportunity to express themselves in this regard, and will inform them of their right to request the suspension of the debate to offer new evidence or prepare their intervention. When this right is exercised, the trial court will suspend the debate for a period that, in no case, may exceed that established for the suspension of the debate provided for in this Code.

Article 399. Closing arguments and closure of the debate.

Once the evidence has been presented, the judge who presides over the trial hearing will successively give the floor to the Public Ministry, the legal adviser of the victim or offended party and the defender, so that they present their closing arguments. Immediately afterwards, the Public Ministry and the defender will be granted the possibility of replicating and duplicating. The reply may only refer to what was expressed by the defender in his closing argument and the rejoinder to what was expressed by the Public Prosecutor or to the victim or victim of the crime in the reply. Lastly, the defendant will be given the floor and at the end the debate will be declared closed.

Explanation: In the opening arguments is where a true legal argument will be made for the purpose of justifying why your point of view should prevail over that of the other.

In the first place, the public prosecutor argued why what was indicated in the ministerial accusation should prevail, pointing out what each witness, expert, document, object means legally speaking, and in his case, discrediting what the counterparty affirmed.

Secondly, the legal adviser of the victim or offended party and later the defense must do the same.

Finally, each of the parties must argue about what the other party said without adding argumentation that was omitted to point out in their first turn, and after this, the defendant will have the last word to speak and with this the debate will be closed.

CHAPTER VI: DELIBERATION, JUDGMENT AND JUDGMENT

Article 400. Deliberation.

Immediately after the conclusion of the debate, the Trial Court will order a recess to deliberate in a private, continuous and isolated manner, until the corresponding ruling is issued. The deliberation may not exceed twenty-four hours or be suspended, except in the case of serious illness of the Judge or member of the Court. In this case, the suspension of the deliberation may not be extended for more than ten business days, after which the Judge or members of the Court must be replaced and the trial held again.

Explanation: Deliberation is the mental process carried out by the trial court for the purpose of determining which point of view will be the one that should prevail within those indicated in the debate hearing.

A limit is established to carry out this mental process, which is a maximum of 24 hours, unless one of the events established in the penultimate line occurs, where up to 10 business days may be taken to carry out the due deliberation.

Article 401. Issuance of judgment.

Once the deliberation is concluded, the trial court will be constituted again in the courtroom, after all the parties have been summoned orally or by any means, with the purpose that the reporting judge communicate the respective ruling. The judgment must indicate:

I. The decision of acquittal or conviction;

II. If the decision was made unanimously or by a majority of the members of the Tribunal, and

III. The concise relationship of the foundations and reasons that support it.

In the event of a conviction, the date on which the hearing to identify the sanctions and repair the damage will be held will be set at the same hearing for communication of the ruling, within a period that may not exceed five days.

In case of acquittal, the trial court may postpone the drafting of the sentence for up to a period of five days, which will be communicated to the parties.

Once the acquittal has been communicated to the parties, the trial court will immediately order the lifting of the precautionary measures that have been decreed against the accused and will order that a note be taken of this lifting in any index or public and police record in which they appear. , as well as their immediate release without these measures to carry out administrative procedures being able to be maintained. The cancellation of the guarantees of appearance and repair of the damage that have been granted will also be ordered.

The trial court will read and explain the sentence in a public hearing. In the event that on the date and time set for the holding of said hearing no person attended, the reading and explanation will be waived and all parties will be deemed notified.

Explanation: The formal and substantive requirements that must be observed by the prosecution court when issuing the corresponding due ruling are more than clear in the indicated article, so the content of the ruling must be clear, which must contain the next:

a) The decision of acquittal or conviction: It is the core part of the ruling, where the resolution reached in the litigation must be established.

In the event of acquittal, the precautionary measures imposed on the acquitted must be lifted, and in the case of preventive detention, the administrative procedures must be carried out immediately with the penitentiary authority so that he is released as soon as possible.

On the other hand, in the event of a conviction, a date will be set for the hearing to identify sanctions and repair the damage.

b) Decision by unanimity or by majority vote: In this case, it must be indicated how the sentence was voted.

It is important to remember that currently the organic laws of the judicial districts of each entity have allowed the trial court to be constituted collegiately or singularly, taking into account the complexity of the matter.

c)Foundation and motivation of the judgment: It must be written at all times in compliance with 14 and 16 of the Constitution and other secondary regulations with the foundation and motivation of the ruling, which, although it must be given orally, is not exempt from the fact that it must be subsequently drawn up in writing.

It is very important to be able to analyze, if there are different reasonings from the court based on the meaning of its ruling, each of these particularities as it can support for the purpose of being able to present a better appeal, or failing that, a better amparo.

Article 402. Conviction of the trial court.

The Court of prosecution will appreciate the evidence according to its free conviction extracted from the entire debate, freely and logically; Only evidence obtained lawfully and incorporated into the debate in accordance with the provisions of this Code will be assessed and submitted to rational criticism.

In the judgment, the trial court must take charge of all the evidence produced in its motivation, including that which it has rejected, indicating in such a case the reasons it has taken into account to do so. This motivation must allow the reproduction of the reasoning used to reach the conclusions reached by the judgment.

No one can be sentenced, except when the Court that judges him acquires the conviction beyond all reasonable doubt, that the defendant is responsible for the commission of the act for which the trial continued. Doubt always favors the accused.

A person may not be convicted on the sole merit of his own statement.

Explanation: The free and logical assessment of the evidence must be the measure used by the trial court when assessing the evidence, it must be analyzed according to a logical criterion, that is, if what was provided is logical, for now having happened before or because it is humanly possible that an event or circumstance has already happened before.

In the event that any evidence has been obtained in violation of fundamental rights, it should not be assessed, that is, it will not be taken into account when issuing the ruling.

The sentence may only be handed down by the court when, beyond all reasonable doubt, the conviction is reached that the defendant committed the crime.

Article 403. Requirements of the sentence.

The sentence will contain:

I. The mention of the Court of prosecution and the name of the Judge or Judges that integrate it;

II. The date it is issued;

III. Identification of the accused and the victim or offended;

IV. The enunciation of the facts and of the circumstances or elements that have been the object of the accusation and, where appropriate, the damages and losses claimed, the reparation claim and the defendant's defenses;

V.A brief and concise description of the content of the test;

VI. The assessment of the means of proof that support the conclusions reached by the Court of prosecution;

VII. The reasons that served to found the resolution;

VIII. The clear, logical and complete determination and exposition of each one of the facts and circumstances that are considered proven and of the assessment of the evidence that supports said conclusions;

IX. The resolutions of acquittal or conviction in which, where appropriate, the trial court rules on the reparation of the damage and sets the amount of the corresponding compensation, and

X. The signature of the Judge or of the members of the Trial Court.

Explanation: Each of the requirements of form and substance must contain the sentence in order to be effective, which must be orally produced, unless the parties agree that only some part of it be read, such as the resolutions thereof.

In the event that any of the requirements are not met, they could be arguments to point out in an appeal or in an constitutional trial (constitutional 14 and 16, among others).

Article 404. Drafting of the sentence.

If the Judicial Body is collegiate, once issued and exposed, the sentence will be drafted by one of its members. The judges will resolve unanimously or by majority vote, being able to found their conclusions separately or jointly if they agree. The dissenting vote will be drafted by its author. The sentence will indicate the name of its editor.

The sentence will produce its effects from the moment of its explanation and not from its written formulation.

Explanation: When the trial court is collegiate, that is, when there are 3 judges who are on trial, it is regularly the reporting judge who explains the meaning of the sentence.

The effects of the sentence will be given from the moment in which it is explained, this for all the effects related to the appeals or human rights trial proceedings that, failing that, it intends to request.

Article 405. Acquittal.

In the acquittal, the Court of judgment will order that note be taken of the lifting of the precautionary measures, in any index or public and police record in which they appear, and it will be immediately enforceable.

In its acquittal, the trial court will determine the cause of exclusion of the crime, for which it may take as a reference, where appropriate, the causes of atypicality, justification or inculpability, under the following headings:

I. They are causes of atypicality: the absence of will or conduct, the lack of any of the elements of the criminal type, the consent of the victim that falls on any available legal right, the winnable type error that falls on some element of the criminal type that does not admit, in accordance with the catalog of crimes susceptible to be configured in a culpable manner provided for in the applicable criminal legislation, as well as the invincible type error;

II. They are causes of justification: the presumed consent, the legitimate defense, the state of justifying necessity, the exercise of a right and the fulfillment of a duty, or

III. causes of inculpability: the error of invincible prohibition, the state of excusing necessity, non-imputability, and the unenforceability of other conduct.

If this is the case, the Court of judgment may also take as a reference that the error of prohibition that can be overcome only mitigates the guilt and thereby also mitigates the penalty, leaving the presence of fraud subsisting, just as occurs in cases of excess of self-defense. and diminished accountability.

Explanation: The causes of exclusion of crime that must be indicated and justified by the court are indicated in detail.

Each of the causes of exclusion of crime are found in article 15 of the Mexican Federal Penal Code and in the penal codes of each federal entity.

In the same way, each of the analyzes that have led them to that conclusion must be substantiated and motivated.

Article 406. Conviction.

The conviction will set the penalties, or, where appropriate, the security measure, and will rule on their suspension and the eventual application of any of the alternative measures to deprivation or restriction of liberty provided for in the law. The sentence that sentences to a custodial sentence, must express with all precision the day from which it will begin to be counted and will set the time of detention or preventive detention that must serve as the basis for compliance.

The conviction will also provide for the confiscation of the instruments or effects of the crime or their restitution, when appropriate. The Court of prosecution will order the repair of the damage. When the evidence produced does not make it possible to establish with certainty the amount of the damages and losses, or the corresponding compensation, the Court of prosecution may generically order to repair the damages and losses and order that they be liquidated in execution of the sentence by incidental means, provided that these have been demonstrated, as well as their duty to repair them.

The trial court will only hand down a conviction when there is a conviction of the guilt of the sentenced person, under the general principle that the burden of proof to demonstrate guilt corresponds to the accusing party, as established by the criminal type in question. When issuing a conviction, the margins of the punishability of the crime will be indicated and the elements of the legal classification will be fully accredited; that is, the criminal type that is attributed, the degree of execution of the act, the form of intervention and the willful or culpable nature of the conduct, as well as the degree of injury or jeopardy of the legal right.

The conviction will refer to the objective, subjective and normative elements of the corresponding criminal type, specifying whether the criminal type was consummated or was carried out in an attempted degree, as well as the way in which the active subject has intervened to carry out the type, depending on whether it is some form of authorship or participation, and the willful or culpable nature of the typical conduct.

In every conviction, it is argued why the sentenced person is not favored by any of the causes of atypicality, justification or inculpability; likewise, reference will be made to the aggravating or mitigating circumstances that have occurred and to the type of crime, if applicable.

Explanation: The conviction must establish the days that must be completed, so the days of preventive detention that the sentenced person has completed must be counted.

In the event that the confiscation of any proceeds of crime has been requested, such as the insured drug, it must be confiscated.

In the case of reparation of the damage, the trial court must establish the respective reparation, and in the event that the damages have not been established exactly, the court will sentence in a generic way, so that in execution the same incidental route can be asserted.

The prosecutor must prove the defendant's guilt beyond any reasonable doubt, so that if this standard is not exceeded, the judge will not be able to pronounce a sentence.

Likewise, the penalty must be established between the minimum and maximum that the crime establishes and indicate the legal classification.

If the sentenced person is not favored with any cause of justification, atypicality or inculpability, the court must indicate in its sentence.

This judicial criterion will help to better interpret this article:

CONVICTIONS GIVEN IN THE ACCUSATORY AND ORAL CRIMINAL PROCESS. IN TERMS OF THE ARTICLE406, LAST PARAGRAPH, OF THE NATIONAL CODE OF CRIMINAL PROCEDURES, SHOULD EXPRESSLY INDICATE WHY SOME CAUSE OF ATIPICITY, JUSTIFICATION OR GUILTY IN FAVOR OF THE SENTENCED IS NOT UPDATED.In accordance with the aforementioned precept, in any conviction it will be "argued" why the sentenced person is not favored by any cause of atypicality, justification or guilt. Therefore, in accordance with the various article405 of the same system, said ruling must adequately explain why any of the following items is not updated in favor of the accused: a) causes of atypicality: i) the absence of will or conduct; ii) the lack of any of the elements of the criminal type (objective, normative or specific subjective components of the typical description); iii) the consent of the victim that falls on any available legal right; iv) the expendable type error that falls on some element of the criminal type (objective or normative) that it does not admit, in accordance with the catalog of crimes susceptible to being configured in a culpable manner provided for in the applicable criminal legislation; and, v) the invincible type error. b) causes of justification: i) presumed consent; ii) legitimate defense; iii) the state of justifying need; and, iv) the exercise of a right or the fulfillment of a duty; and, c) causes of inculpability: i) inimputability ii) the error of invincible prohibition; iii) the state of excusing necessity; and, iv) the

unenforceability of other conduct. Then, in the conviction handed down in the accusatory and oral criminal proceedings, the judgments of criminality, illegality and guilt of the conduct must be carried out, and it must be expressly indicated, through the externalization of a reasoning or set of linked propositions, why the sentenced person did not is favored with some cause that excludes the crime.

Article 407. Consistency of the sentence.

The sentence of conviction may not exceed the facts proven in court.

Explanation: The court will not be able to exceed when it comes to condemning the sentenced person more than what was proven in court, following the principle of congruence in the sentences.

Article 408. Means of evidence in the individualization of sanctions and damage repair.

The relief of the means of proof for the individualization of sanctions and reparation of the damage will proceed after having resolved on the responsibility of the sentenced person.

The debate will begin with the relief of the means of proof that have been admitted in the intermediate stage. In the relief of the means of proof, the rules relating to the oral trial will be applicable.

Explanation: The next hearing after the trial will be the individualization of sanctions and damage repair, only in case the person has been sentenced.

What this hearing establishes is, what penalty should be imposed on the sentenced between the minimum and maximum established by the crime, or, where appropriate, the crimes in the case of concurrence of crimes.

This hearing is similar to that of an oral trial, it begins with an opening statement by the parties and later the evidence of the parties is released, and finally a closing statement by the parties.

It is very common in this hearing that evidence is not presented and that the evidence that was presented at the trial stage is requested to be assessed, which is why on many occasions, at the proposal of the trial court, it is requested that only the opening and closing arguments in a single presentation.

Article 409. Hearing for identification of sanctions and damage repair.

After the opening of the individualization hearing of the participants, the Court of prosecution will indicate the matter of the hearing, and will give the floor to the parties so that they can present, where appropriate, their opening arguments. Immediately afterwards, it will ask the parties to determine the order in which they want the relief of the means of proof and will declare the debate open. This will begin with the presentation of the evidence and will continue with the closing arguments of the parties.

Once the debate is closed, the trial court will deliberate briefly and proceed to make a statement regarding the sanction to be imposed on the sentenced person and on the reparation for the damage caused to the victim or offended party. Likewise, it will set the penalties and rule on the eventual application of any of the alternative measures to the prison sentence or on its suspension, and will indicate in what form, if any, the damage should be repaired. Within five days following this hearing, the Court will draft the sentence.

The absence of the victim who has been duly notified will not be an impediment to holding the hearing.

Explanation: This hearing is similar to that of an oral trial, it begins with an opening statement by the parties and later the evidence of the parties is released, and finally a closing statement by the parties.

It is very common in this hearing that evidence is not presented and that the evidence that was presented at the trial stage is requested to be assessed, which is why on many occasions, at the proposal of the trial court, it is requested that only the opening and closing arguments in a single presentation.

Article 410. Criteria for the individualization of the criminal sanction or security measure.

The trial court, when identifying the applicable penalties or security measures, must take the following into consideration:

Within the margins of punishability established in the criminal laws, the trial court will individualize the sanction taking as a reference the seriousness of the typical and unlawful conduct, as well as the degree of guilt of the sentenced person. The security measures not accessory to the sentence and the legal consequences applicable to moral persons, will be individualized taking only into consideration the seriousness of the typical and unlawful conduct.

The seriousness of the typical and unlawful conduct will be determined by the value of the legal asset, its degree of affectation, the willful or culpable nature of the conduct, the means used, the circumstances of time, manner, place or occasion of the act, as well as by the form of intervention of the sentenced.

The degree of guilt will be determined by the trial of reproach, depending on whether the sentenced person has had, under the circumstances and characteristics of the event, the concrete possibility of behaving differently and of respecting the broken legal norm. If several people were involved in the same act, each of them will be penalized according to the degree of their own culpability.

To determine the degree of guilt, the motives that prompted the conduct of the sentenced person, the specific physiological and psychological conditions in which he was found at the time of the commission of the act, age, educational level, customs, social and cultural conditions, as well as the ties of kinship, friendship or relationship that he has with the

victim or offended party. Likewise, the other special circumstances of the sentenced, victim or offended party will be taken into account, as long as they are relevant for the individualization of the sanction.

Expert opinions and other evidence may be taken into consideration for the purposes indicated in this article.

When the sentenced person belongs to an ethnic group or indigenous people, in addition to the previous aspects, their uses and customs will be taken into account.

In the event of a real contest, the sanction of the most serious crime will be imposed, which may be increased with the penalties that the law contemplates for each of the remaining crimes, without exceeding the maximums indicated in the applicable criminal law. In the event of an ideal contest, the sanctions corresponding to the crime that deserves the highest penalty will be imposed, which may be increased without exceeding half of the maximum duration of the corresponding penalties for the remaining crimes, provided that the applicable sanctions are of the same nature; When they are of a different nature, the legal consequences indicated for the remaining crimes may be imposed. There will be no competition when the behaviors constitute a continuous crime; however, in these cases the criminal sanction will be increased by up to one half of that corresponding to the maximum of the crime committed.

The increase or decrease of the penalty, based on the personal relationships or subjective circumstances of the perpetrator of a crime, will not be applicable to the other subjects who intervened in it. Those that are based on objective circumstances will be applicable, provided that the other subjects are aware of them.

Explanation: Within the hearing for the individualization of sanctions and reparation of the damage, the rules applicable to the criteria for the individualization of the criminal sanction or security measure must necessarily be carried out, in order to seek that the judge impose the most appropriate penalty. the particular circumstances surrounding the crime.

For the purposes of establishing the criminality margins of the sanction, the trial court will take into account the following:

- ***seriousness of typical and unlawful conduct:***
- ***degree of guilt of the sentenced:***

For the purposes of taking into account the security measures not accessory to the sentence and the legal consequences applicable to people, only the following will be taken into account:

- ***The seriousness of the typical and unlawful conduct:***

Article 411. Issuance and presentation of sentences.

The trial court must explain any sentence of acquittal or conviction.

Explanation: After the sentence is issued and the sanctions individualization hearing is carried out, the trial court will hold a hearing in which it will explain the sentence it has issued.

In this same hearing, he will explain the motivation that led him to make such a determination (the sentence he issued), and in the event of a conviction, why he reached the established penalty and his respective compensation for the damage.

Article 412. Firm sentence.

As long as they are not appealed in a timely manner, the judicial decisions will remain final and will be enforceable without the need for any declaration.

Explanation: The sentence issued by the trial court will remain final, that is, it will no longer admit any appeal when the terms to appeal the sentence have elapsed and it has not been presented.

Article 413. Remission of the sentence.

The Court of prosecution within the three days following that in which the conviction becomes final, must send an authorized copy of the same to the Judge that corresponds to the corresponding execution and to the prison authorities that intervene in the execution procedure for its due compliance.

Said provision will also be applicable in cases of convictions handed down in the abbreviated procedure.

Explanation: The stage of execution of the penalty begins from the moment the sentence is enforceable in the ordinary procedure, so from that moment the competent judge will be the one executing the sentence.

TITLE IX: IMPUTABLE PEOPLE

SINGLE CHAPTER: PROCEDURE FOR INCIDENTAL PERSONS

Article 414. Procedure for the application of reasonable adjustments in the initial hearing.

If in the course of the initial hearing, indications appear that the accused is in any of the cases of non-imputability provided for in the General Part of the applicable Criminal Code, either party may request the control judge to order the practice of expert opinions that determine if it is effectively unimputable and if so, if the unimputability is permanent or transitory and, where appropriate, if it was caused by the accused. The hearing will continue with the same general rules but the reasonable adjustments determined by the Control Judge will be provided to guarantee the person's access to justice.

In cases where the person is detained, the Public Ministry must apply reasonable adjustments to avoid a greater degree of vulnerability and respect for their personal integrity. For such purposes, you will be able to request the practice of those expert reports that allow you to determine the type of inimputability that you have, as well as if it is permanent or transitory and, if possible, define if it was caused by the detainee himself.

Explanation: At any time, any of the parties can request the court, based on objective data obtained that are carried out by experts, and determine if the person is unimputable.

Article 415. Identification of the cases of non-imputability.

If the accused has been linked to the process and it is estimated that he is in a situation of non-imputability, the parties may request the control judge to carry out the necessary expert opinions to determine if such an end is proven, as well as if the non-imputability that he presents It may or may not have been caused by the person.

Explanation: It is important to point out that the imputability promoted does not exclude the crime, so it is important to analyze the case and verify if this circumstance occurs.

Article 416. Adjustments to the procedure.

If the state of unimputability of the subject is determined, the ordinary procedure will be applied observing the general rules of due process with the adjustments of the procedure that in the specific case the Control Judge agrees, listening to the Public Ministry and the Defender, in order to certify the participation of the unimputable person in the attributed fact and, where appropriate, determine the application of the security measures deemed pertinent.

In the event that the state of non-imputability ceases, the ordinary procedure will continue without the respective adjustments.

Explanation: The control judge will have the obligation in the event that it is proven that the accused is not imputable to generate adjustments for the purpose of ensuring his rights, that he knows in detail the facts for which he is being accused, that he exercises his rights of defense, its possibilities within the process, and in general, all those prerogatives that the process allows.

Article 417. Precautionary measures applicable to unimputable persons.

Precautionary measures may be imposed on non-imputable persons, in accordance with the rules of the ordinary process, with the adjustments of the procedure provided by the Control Judge for the case in which it is appropriate.

The mere fact of being attributable will not be a sufficient reason to impose precautionary measures.

Explanation: For the purposes of precautionary measures, there is no distinction whatsoever due to the precautionary measures that can be imposed on the unimputable party in the process, so only the judge may request adjustments or measures to guarantee the rights of the unimputable party and comply with the purposes of the precautionary measures.

Article 418. Prohibition of abbreviated procedure.

The abbreviated procedure will not be applicable to unimputable persons.

Explanation: The abbreviated procedure is prohibited in non-imputable persons, the reason for this rests on the idea that one of the requirements for the purpose of accessing this form of early termination of the process is precisely accepting responsibility for the accused act, which obviously of unimputable persons would become impossible due to the lack of will of the accused, since he was unable to make a free decision and know all the consequences of it.

Article 419. Resolution of the case.

Once the existence of the fact that the law indicates as a crime has been verified and that the unimputable party intervened in its commission, either as author or as a participant, without any cause of justification provided for in the substantive codes operating in his favor, the Trial Court will resolve the matter. case indicating that there is sufficient basis for the imposition of the applicable security measure; likewise, it will correspond to the Jurisdictional Body to determine the individualization of the measure, in attention to the needs of special positive prevention, respecting the criteria of proportionality and minimum intervention. If these requirements are not accredited, the prosecution court will acquit the accused.

The security measure may in no case have a longer duration than the penalty that could correspond to it in the event that it is attributable.

TITLE: SPECIAL PROCEDURES

CHAPTER I: INDIGENOUS PEOPLES AND COMMUNITIES

Article 420. Indigenous peoples and communities.

In the case of crimes that affect the legal assets of an indigenous people or community or the personal assets of any of its members, and both the accused and the victim, or, where appropriate, their relatives, accept the manner in which the community, in accordance with to their own regulatory systems in the regulation and solution of their internal conflicts proposes to resolve the conflict, the extinction of the criminal action will be declared, except in cases in which the solution does not consider the gender perspective, affects the dignity of the people, the best interest of boys and girls or the right to a life free of violence against women.

In these cases, any member of the indigenous community may request that this be declared before the competent Judge.

Excluded from the foregoing are the crimes provided for informal preventive detention in this Code and in the applicable legislation.

Explanation: In the case of indigenous communities, the law allows that when there is an agreement between the victim and the accused of the crime, they resolve their differences through their uses and customs.

The limitations established by the law is that in the solution of the case it is not judged with a gender perspective or the interests of children and women's rights are not respected.

Likewise, if it is about the commission of a crime of unofficial preventive detention indicated in article 19 of the Constitution, the uses and customs may not be used and must necessarily be submitted to the ordinary process.

CHAPTER II: PROCEDURE FOR LEGAL ENTITIES

Article 421. Exercise of criminal action and autonomous criminal responsibility.

Legal persons will be criminally responsible for crimes committed in their name, on their behalf, for their benefit or through the means they provide, when it has been determined that there was also a failure to observe due control in their organization. The foregoing regardless of the criminal liability that their representatives or administrators may incur in fact or law.

The Public Prosecutor's Office may exercise criminal action against legal persons with the exception of state institutions, regardless of the criminal action that it could bring against the natural persons involved in the crime committed.

The criminal liability of legal persons will not be extinguished when they are transformed, merged, absorbed or divided. In these cases, the transfer of the sentence may be graduated according to the relationship that is kept with the legal person originally responsible for the crime.

The criminal liability of the legal person will not be extinguished by its apparent dissolution, when its economic activity continues and the substantial identity of its clients, suppliers, employees, or the most relevant part of all of them is maintained.

The causes of exclusion of the crime or extinction of the criminal action, which could concur in any of the individuals involved, will not affect the procedure against legal persons, except in cases in which the individual and the legal person have committed or participated in the same acts and these have not been considered as those that the law indicates as a crime, by a previous judicial resolution. Neither can the procedure be affected by the fact that any natural person involved withdraws from the action of justice.

Legal persons will be criminally responsible only for the commission of the crimes provided for in the catalog provided in the penal legislation of the federation and of the federative entities.

Explanation: From the entry into force of this national code, it is possible that legal persons (companies, legal persons of other types) may have criminal liability.

This will occur when it is proven that a crime was committed using the organization for such purposes and it is also proven that the legal person did not have established controls for the purpose of having prevented the legal-criminal phenomenon from happening.

Public agencies may not be charged criminally through this figure, such as the IMSS, however, natural persons who have acted against the criminal law (an IMSS doctor who performed medical negligence in a surgical intervention) may be criminally charged.

The strategy of merging or transforming the company will not be sufficient for the purpose of eliminating criminal liability, nor will the legal person disappear when the identity of clients, suppliers and other indications that presume that the operation of the company continues prevails.

Article 422. Legal consequences.

Legal persons, with their own legal personality, may be subject to one or more of the following sanctions:

I. Monetary penalty or fine;

II. Confiscation of instruments, objects or proceeds of crime;

III. Publication of the sentence;

IV. Dissolution, the

V. Others that are expressly determined by criminal laws in accordance with the principles established in this article.

For the purposes of individualizing the above sanctions, the Court must take into consideration the provisions of article 410 of this ordinance and the corresponding degree of guilt in accordance with the following aspects:

a) The magnitude of the non-observance of due control in your organization and the enforceability of conducting itself in accordance with the standard;

b) The amount of money involved in the commission of the criminal act, if applicable;

c) The legal nature and annual business volume of the moral person;

d) The position occupied, in the structure of the legal entity, by the person or individuals involved in the commission of the crime;

e) The degree of subjection and compliance with legal and regulatory provisions, and

f) The public interest of the social and economic consequences or, where appropriate, the damage that could be caused to society, the imposition of the penalty.

For the imposition of the sanction related to the dissolution, the court must consider, in addition to the provisions of this article, that the imposition of said sanction is necessary to guarantee public or national security, avoid putting the national economy at risk or public health or that with it the commission of crimes is stopped.

Legal persons, with or without their own legal personality, who have committed or participated in the commission of a typical and unlawful act, may impose one or more of the following legal consequences:

I. Suspension of its activities;

II. Closure of its premises or establishments;

III. Prohibition of carrying out in the future the activities in the exercise of which the commission has been committed or participated in;

IV. Temporary disqualification consisting of the suspension of rights to participate directly or through an intermediary in public sector contracting procedures

V. Judicial intervention to safeguard the rights of workers or creditors, or

VI. Public reprimand.

In this case, the Court must identify the legal consequences established in this section, in accordance with the provisions of this article and the provisions of article 410 of this Code.

Article 423. Formulation of the imputation and link to the process.

When the Public Ministry becomes aware of the possible commission of a crime in which a legal entity is involved, in the terms provided in this Code, it will initiate the corresponding investigation.

In the event that during the investigation the seizure of assets is carried out, the Public Ministry will give a hearing to the representative of the legal person in order to let him know his rights and state what is appropriate to his right.

For the purposes of this Chapter, the Court may issue as precautionary measures the suspension of activities, the temporary closure of premises or establishments, as well as judicial intervention.

In the initial hearing carried out to file charges against the natural person, the representative of the legal person, assisted by the Ombudsman, will be informed, where appropriate, of the charges that are filed against the person represented, so that said representative or his Ombudsman state what is appropriate to his right.

The representative of the legal person, assisted by the designated Ombudsman, may participate in all acts of the procedure.

Accordingly, they will be notified of all the acts that they have the right to know, they will be summoned to the hearings, they will be able to offer means of proof, present evidence, promote incidents, formulate allegations and file the appropriate appeals against the resolutions that the person legal harm.

In no case may the representative of the legal entity that has the character of the accused represent it. Where appropriate, the Court may bind the legal person to the process.

Article 424. Forms of early termination.

During the process, to determine the criminal liability of the legal entities referred to in this Chapter, alternative solutions and early forms of termination of the process may be applied and, where appropriate, the special procedures provided for in this Code.

Article 425. Sentences.

In the judgment handed down, the Court will resolve what is pertinent to the accused natural person, regardless of the criminal responsibility of the legal person, imposing the appropriate sanction.

In what is not provided for in this Chapter, the rules of the ordinary procedure provided for in this Code will be applied in what is compatible.

CHAPTER III: CRIMINAL ACTION BY PARTICULAR

Article 426. Criminal action by individuals.

The exercise of criminal action corresponds to the Public Ministry, but it may be exercised by individuals who have the quality of victim or offended in the cases and in accordance with the provisions of this Code.

Explanation: The power to investigate and prosecute crimes is exclusive to the public prosecutor, as a general rule, however in certain cases it may be exercised by the victim or offended, through their legal advisor, under the rules established in this chapter.

Article 427. Accumulation of causes.

The accumulation of criminal action procedures by individuals with public criminal action procedures will only proceed when the same facts are involved and there is identity of parties.

Explanation: There is the possibility that criminal proceedings can accumulate as long as there are the same facts and there is identity of parties.

Article 428. Assumptions and conditions in which criminal action by individuals proceeds.

The victim or offended may exercise criminal action only in crimes prosecutable by complaint, whose penalty is alternative, other than deprivation of liberty or whose maximum punishment does not exceed three years in prison.

The victim or offended party may go directly before the Control Judge, exercising criminal action by individuals in the event that they have data that allows establishing that an act has been committed that the law indicates as a crime and there is a probability that the accused committed or participated in it. in his commission. In this case, you must provide the evidence that supports your action, without the need to go to the Public Ministry.

When, due to the investigation of the crime, it is necessary to carry out acts of annoyance that require judicial control, the victim or offended party must go before the control judge. When the act of nuisance does not require judicial control, the victim or offended must go before the Public Ministry so that it can be carried out. In both cases, the Public Ministry will continue with the investigation and, where appropriate, will decide on the exercise of criminal action.

Explanation: There are limitations for the purposes that criminal action can be brought by individuals.

Article 429. Formal and material requirements.

The exercise of the criminal action by individual will serve as the presentation of the complaint and must be supported in a hearing before the Control Judge with the following requirements:

I. The name and address of the victim or offended;

II. If the victim or the offended party is a legal person, its company name and address will be indicated, as well as that of its legal representative;

III. The name of the accused and, where appropriate, any data that allows his location;

IV. The indication of the acts that are considered criminal, the test data that establish them and determine the probability that the accused committed them or participated in their commission, those that prove the damages caused and their approximate amount, as well as those that establish the quality of victim or offended;

V. The legal grounds on which the action is based, and

VI. The request that is formulated, expressed with clarity and precision.

Article 430. Content of the petition.

When exercising criminal action before the Control Judge, the individual may request the following:

I. The order to appear against the accused or his summons to the initial hearing, and

II. The claim for damage reparation.

Article 431. Admission.

At the hearing, the control judge verified that the formal and material requirements for the exercise of the private criminal action are met.

If any of the formal requirements are not met, the Control Judge will prevent the individual from complying with it within the same hearing and, if this is not possible, within the following three days. If the claim is not corrected or is inadmissible, the criminal action will be deemed not filed and may not be brought again by the individual for those same facts.

Once the criminal action brought by the individual is admitted, the control judge will order the summons of the accused to the initial hearing, aware that in case of not attending, his appearance or arrest will be ordered, as appropriate.

The accused must be summoned to the initial hearing no later than forty-eight hours after the date on which the hearing is held.

The initial hearing must be held within five to ten days after the one in which the criminal action is admitted, informing the accused at the time of the summons of the right he has to designate and attend accompanied by a Defender of his choice and that failing to do so, a Public Defender will be appointed.

Article 432. General rules.

If the victim or offended party decides to pursue criminal action, for no reason may he go to the Public Prosecutor's Office to request his intervention to investigate the same facts.

The burden of proof to prove the existence of the crime and the responsibility of the accused corresponds to the individual who exercises the criminal action. The parties, in procedural equality, may provide any evidence they have and file the means of challenge that legally proceed.

To the accusation of the victim or offended, the rules provided for the accusation presented by the Public Ministry will be applicable.

In the same way, except legal provision to the contrary, in the substantiation of criminal action promoted by individuals, the provisions related to the procedure, provided for in this Code and the alternative dispute resolution mechanisms will be observed in all that is applicable.

TITLE XI: INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER I: GENERAL DISPOSITION

Article 433. General provisions.

The United States of Mexico will provide any foreign state or ministerial or judicial authority that requires it, both at the federal and common law levels, with the widest assistance related to the investigation, prosecution, and punishment of crimes that correspond to the jurisdiction of Mexico. this.

The execution of the requests will be carried out according to the legislation of the United Mexican States, and the same will be released as soon as possible. The authorities that intervene will act with the greatest diligence in order to comply with the request in legal assistance.

Explanation: In matters of international competition, the federal prosecutor's office and the state prosecutor's offices will be obliged to provide support with the infrastructure and human resources available to the prosecutor's office for purposes of supporting the investigation and punishment of crimes that must be carried out. out in foreign countries.

Article 434. Scope of application.

International legal assistance aims to provide support between the competent authorities in relation to matters of a criminal nature.

In accordance with the international commitments signed by the Mexican State in terms of legal assistance, as well as the respective internal regulations, the greatest collaboration must be provided for the investigation and prosecution of crimes, and in any of the actions included in the framework of criminal procedures that are the responsibility of the authorities of the requesting party at the time assistance is requested.

Legal assistance may only be invoked to obtain evidence ordered by the investigating authority, or the judicial authority to better provide, but never for those offered by the accused or their defense, even when they are accepted or favorably agreed upon by the authorities. judicial.

Explanation: International legal assistance is exclusive to the ministerial or judicial authority of those countries only with regard to the prosecution of crimes or in the requests of the judiciary for the best judgment, expressly excluding the actions and requests made by the defense of a defendant.

Article 435. Procedure and resolution.

The procedures established in this Chapter must be applied for the processing and resolution of any request for legal assistance received from abroad, when there is no international treaty.

If there is a Treaty between the requesting State and the United Mexican States, its provisions will govern the processing and processing of the request for legal assistance. Anything that is not specifically contemplated in a Legal Aid Treaty shall apply the provisions of this Code.

Article 436. Principles.

International legal assistance must be governed by the following principles:

I. Connectedness. Any request for assistance to be appropriate must necessarily be linked to an ongoing investigation or process;

II. Specificity. Requests for international legal assistance must contain specific facts and precise requirements;

III. Identity of Norms. Assistance will be provided regardless of whether or not the fact that motivates the request constitutes a crime under the laws of the requested State. Excepted from the foregoing is the assumption that assistance is requested for the execution of the seizure or embargo, search or home search or confiscation or seizure measures, in which case it will be necessary that the fact that gives rise to the procedure is also considered as offense under the law of the requested State, and

IV. Reciprocity. It consists of international collaboration between sovereign States in which equality prevails.

Article 437. Central Authority.

The Central Authority in matters of international legal assistance will be the Office of the Attorney General of the Republic, which will exercise the powers established in this Code.

Any request for legal assistance formulated based on current international instruments, in accordance with the principle of international reciprocity, may be submitted for processing and attention to the Central Authority, or through diplomatic channels.

Article 438. Reciprocity.

In the absence of an international agreement or treaty, the United Mexican States will provide assistance under the principle of international reciprocity, which will be subordinated to the existence or offer by the requesting State or authority to cooperate in similar cases. Said commitment must be established in writing in the terms established for such purposes by the Central Authority.

Article 439. Scope.

Legal assistance will include:

I. Notification of procedural documents;

Obtaining evidence;

II. Exchange of information and initiation of criminal proceedings in the requested party;

III. Location and identification of people and objects;

IV. Reception of statements and testimonies, as well as practice of expert opinions;

V. Execution of search warrants or house searches and other precautionary measures; seizure of objects, products or instruments of crime;

VI. Summons defendants, witnesses, victims and experts to appear voluntarily before the competent authority in the requesting party;

VII. Summons and temporary transfer of persons deprived of liberty in the requested party, in order to appear as witnesses or victims before the requesting party, or for other procedural actions indicated in the request for assistance;

VIII. Delivery of documents, objects and other evidence;

IX. Authorization of the presence or participation, during the execution of a request for legal assistance, of representatives of the competent authorities of the requesting State or authority, and

X: Any other form of assistance, as long as it is not prohibited by Mexican law.

Article 440. Denial or postponement.

The requested legal assistance may be denied when:

I. The fulfillment of the request may contravene security and public order;

II. The fulfillment of the request is contrary to national legislation;

III. The execution of the request is contrary to the international obligations acquired by the United Mexican States;

IV. The request refers to crimes of military jurisdiction;

V. The request refers to a crime that is considered of a political nature by the Mexican Government;

VI. The request for legal assistance refers to a crime punishable by death, unless the requesting party provides sufficient guarantees that the death penalty will not be imposed or that, if imposed, it will not be executed;

VII. The request for legal assistance refers to facts based on which the person subject to investigation or prosecution has been definitively acquitted or sentenced by the requested party.

Compliance with the request for legal assistance may be deferred when the Central Authority considers that its execution may harm or hinder an ongoing investigation or judicial proceeding.

In case of denying or deferring legal assistance, the Central Authority will inform the requesting party, stating the reasons for such decision.

Article 441. Requests.

All requests for assistance must be made in writing and in the case of urgent cases it may be sent to the Central Authority by fax, email or any other permitted means of communication, under the commitment to send the original document as soon as possible. In the case of requests from foreign authorities, it must be accompanied by its respective translation into Spanish.

Article 442. Essential requirements.

There are minimum requirements that all requests for legal assistance must contain, the following:

I. The identity of the authority making the request;

II. The subject and nature of the investigation, proceeding or diligence;

III. A brief account of the facts;

IV. The purpose for which the tests are required; information or performance;

V. The execution methods to be followed;

SAW. If possible, the identity, location and nationality of any person concerned, and

VII. The transcription of the applicable legal provisions.

Article 443. Execution of requests for legal assistance from a foreign authority.

The Central Authority will analyze whether the request for legal assistance meets the essential requirements and if it is attached to the terms of the international agreement or treaty, if any, it will proceed to discharge it in accordance with the special forms and procedures indicated. in the request by the requesting party, except when they are incompatible with domestic law.

The Central Authority will timely forward the information or action and, where appropriate, the evidence obtained as a result of the execution of the request to the requesting party.

When it is not possible to comply with the request, in whole or in part, the Central Authority will immediately notify the requesting party and inform of the reasons that prevent its execution.

Article 444. Confidentiality and limitations on the use of information.

The Central Authority, as well as those authorities that have knowledge of or participate in the execution and relief of any request for assistance, are obliged to maintain confidentiality regarding its content and the documents that support it.

Obtaining information and evidence supplied in response to a request for international legal assistance may only be used for the purpose for which it was requested and for the investigation or judicial process in question, unless express written consent is obtained. of the State or the requesting authority for use for various purposes.

CHAPTER II: SPECIFIC FORMS OF ASSISTANCE

Article 445. Notification of procedural documents.

In those attendances whose purpose is the notification of documents, the name and address of the person or persons who must be notified must be specified.

When the notification is intended to make known any procedure or action with a specific date, it must be sent with reasonable anticipation of the date of the procedure.

In all cases, the Central Authority, without delay, will proceed to carry out or process the notification of procedural documents provided by the State or the requesting authority, in the manner and terms requested.

The authority that makes the notification will draw up a circumstantial act or a statement dated and signed by the addressee, stating the fact, the date and the form of notification.

Article 446. Reception of testimonies or declarations of people.

The requesting authority must provide the full name of the person whose statement or testimony must be obtained, the address where they can be located, their date of birth and a list of questions to be answered.

Article 447. Provision of documents, records or evidence.

In the request for assistance, the requesting State or authority must indicate the location of the required records or documents, and in the case of financial institutions, the name and, to the extent possible, the respective account number, this last requirement may vary from accordance with the agreement or treaty that applies in your case.

Article 448. Location and identification of persons or objects.

At the request of the requesting party, the requested party will adopt all the measures contemplated in its legislation for the location and identification of persons and objects indicated in the request, and will keep the requesting party informed of the progress and results of its investigations.

Article 449. Search, immobilization and insurance of assets.

In the case of proceedings ordered by judicial authorities whose purpose is to carry out a search or measures aimed at immobilizing and securing assets, the requesting State or authority must provide:

I. The exact location of the goods;

II. In the case of financial institutions, the name and address of the institution and the respective account number;

III. The documentation proving the relationship between the requested measures and the available evidence, and

IV. The reasons and arguments that one has to believe that the objects, products or instruments of a crime are found in the territory of the requested party.