

CODE OF PENAL PROCEDURE OF CAPE VERDE
PART ONE
PRELIMINARY VOLUME
FOUNDATIONS OF PENAL PROCEDURE
TITLE III
THE LAW OF PENAL PROCEDURE AND ITS APPLICATION, AND SUFFICIENCY OF PENAL
ACTION
CHAPTER I
APPLICATION OF THE LAW OF PENAL PROCEDURE

Article 25

Subsidiary application

Barring a legal provision to the contrary, the provisions of this Code shall be applicable on a subsidiary basis to proceedings of a penal nature governed by specific legislation.

Article 26

Covering of gaps

In cases not covered, when the provisions of this Code cannot be applied by analogy, the rules of civil procedure as harmonized with penal procedure shall be followed or, in default thereof, the general principles of penal procedure shall be applied.

Article 27

Application of the law of penal procedure in time

1. The law of penal procedure shall be applied immediately, without prejudice to the validity of acts carried out pursuant to the previous law.
2. The provision contained at the end of the preceding article shall not be applied with respect to defining criteria and conditions of application of coercive measures that restrict freedom.
3. The law of penal procedure shall not apply to proceedings begun prior to its entry into force if its immediate application could result in the following:
 - (a) a worsening of the procedural situation of the accused, and in particular any limiting of his right of defence;
 - (b) a disruption of harmony and consistency among the various acts making up the proceedings.

Article 28

Application of the law of penal procedure in space

The law of penal procedure shall apply throughout Cape Verdean territory and beyond to the extent defined under international agreements applicable within Cape Verde or pursuant to agreements entered into in the area of judicial cooperation.

(...)

TITLE IV
JURISDICTION AND COMPETENCE
CHAPTER I
GENERAL PROVISIONS

Article 31

Jurisdictional function

Only the courts shall be competent to decide penal cases and to impose penalties or security measures.

Article 32

Exercise of penal jurisdictional function

1. The courts shall decide penal cases in accordance with legislation and the law.
2. All public and private entities shall be required to cooperate with the courts by providing them with whatever assistance they may request in the exercise of their functions, and the courts shall have preference over any other service.

Article 33

Applicable provisions

The competence of the courts in penal matters shall be governed by the legislation concerned with the organization of the judiciary, in all matters where it is not regulated by the provisions of this Code.

Article 34

Determination of the applicable penalty

For purposes of the provisions of the law on the material and functional competence of the courts, in so far as the determination of the applicable penalty is concerned, all circumstances that may give rise to the maximum legal penalty that can be applied in a proceeding shall be taken into account.

CHAPTER II TERRITORIAL COMPETENCE

Article 35

General rules

1. The court within whose territory a crime is determined to have been committed shall be competent to hear the corresponding case.
2. If the crime is committed by means of successive or repeated acts, or by means of a single act that can be prolonged over a period of time, the competent court shall be the court in whose territory the last act was committed or in whose territory the commission of the crime ceased.
3. If the crime is determined to have been committed in a different place from the place where the crime had the result that the law seeks to prevent, even though the commission of the crime has been completed, the competent court shall be the court in whose territory the result or completion of the crime took place.
4. In the case of an attempted crime or punishable preparatory act, the competent court shall be the court in whose territory the last act of the attempted crime or last preparatory act took place.

Article 36

Crimes committed aboard a vessel or an aircraft

1. In the case of a crime committed aboard a vessel, the competent court shall be the court whose territory includes the Cape Verdean port to which the perpetrator travels or at which he disembarks.
2. If the perpetrator does not travel to or disembark at a point situated within Cape Verdean territory, the competent court shall be the court of the vessel's port of registry.
3. The provisions set forth in the preceding paragraphs shall likewise apply in the case of a crime committed aboard an aircraft.

Article 37

Supplementary rules

1. If the crime is connected to different territories and there is any doubt as to which territory was the locale for the pertinent factor for determining territorial competence, any court of the various territories shall be competent to hear the case, with preference being given to the court in whose territory the crime was first identified.
2. If the locale for the pertinent factor for determining territorial competence is unknown, or if by application of the rules laid down in the preceding articles it is not possible to determine territorial competence, the competent court shall be the court whose territory includes the domicile or residence of the accused or, if the accused has no fixed residence or his place of residence is unknown, the court in whose territory the crime was first identified.

Article 38

Crimes committed abroad

1. If the crime was committed abroad, the competent court to hear the case shall be the court within whose territory the perpetrator or his domicile is located.
2. If it is not possible to determine which court is the competent court according to the provision contained in the preceding paragraph, the competent court shall be the court in whose territory the crime was first identified.
3. If the crime was only partially committed abroad, the competent court to hear the case shall be the Cape Verdean court in whose territory the last pertinent act was carried out, in accordance with the provisions of the preceding articles.

(...)

TITLE III

**PREVENTIVE MEASURES, AND MEANS OF PROTECTING
AND OBTAINING EVIDENCE**

(...)

**CHAPTER III
INSPECTIONS AND SEARCHES**

Article 234

Concepts and defining criteria

1. When there are signs that a person is concealing on his person items that relate to a crime or that may serve as evidence, an inspection shall be ordered.
2. When there are signs that the items referred to in the preceding article, or the accused or any other person who is to be detained, are situated in a private location or a location to which the public does not have free access, a search shall be ordered.
3. Inspections and searches shall be authorized or ordered by the competent judicial authority.
4. Inspections and searches conducted by police bodies concerned with criminal investigations shall be exempted from the requirement set forth in the preceding paragraph in the following cases:
 - (a) in the case of crimes connected with terrorism or criminal organizations, crimes punishable by a maximum penalty of more than eight years' imprisonment, crimes committed with violence or the threat of violence, or crimes whose suspects pose an imminent flight risk;
 - (b) if there is sound reason to believe that any delay may pose a serious and immediate danger to life, physical integrity, freedom, or the survival of the constitutional rule of law in Cape Verde.
5. In those cases cited in the second part of the preceding paragraph, the competent judge shall be notified immediately of the inspection or search so that he may assess it and confirm it, lest it be deemed invalid.

Article 235

Order to surrender items

1. If the object of the inspection or search is to obtain one or more specific items, the competent judicial authority may order that they be surrendered.
2. If the order is willingly and promptly complied with, the inspection or search shall not take place unless it is considered useful to advance the investigation.

Article 236

Inspection formalities

1. Except in those cases indicated in paragraph 4 of Article 234, a copy of the order shall be given to the person concerned before the inspection is carried out.
2. The provisions contained in paragraphs 1 to 3 of Article 234 shall also apply.

Article 237

Formalities for searches of premises or vehicles

1. Except in those cases indicated in paragraph 4 of Article 234, a copy of the order shall be given to whoever has access to the premises or vehicle to be searched before the search is carried out. In addition, the provision contained in paragraph 2 of the preceding article shall apply.
2. If the person referred to in the preceding paragraph is not available, the copy shall be given, if possible, to a relative, a neighbour, a building attendant or some other person substituting for one of them.
3. In conjunction with the search of premises or vehicles, or during such a search, an inspection may be conducted of any persons found on the premises.
4. The provisions contained in paragraph 2 of Article 226 shall also apply.

Article 238

Search of homes

1. A search of a person's dwelling or a closed annex may be ordered or authorized only by a judge.
2. In no case shall it be permissible to conduct a search of a person's home before seven o'clock in the morning or after eight o'clock in the evening.

3. Home searches may also be ordered by the Ministry of the Public Prosecutor or by police bodies concerned with criminal investigations in the event that a person is apprehended in the act of committing a crime or for the purpose of rendering assistance.

Article 239

Search of lawyers' offices, physicians' surgeries or other professionals' offices

1. A search of a lawyer's office or domicile, or of a physician's surgery, or of the offices of other professionals who have a legal or statutory requirement of secrecy must be supervised by the judge in person, lest it be deemed invalid. Before the search is carried out, the judge shall notify the president of the corresponding professional association, if such an association exists, so that he or his representative may be in attendance.

2. In the case of a search of a government health facility, the notification referred to in the preceding paragraph shall be made to the director of the facility or his legal deputy.

Article 240

Search of media premises

A search of media premises must be supervised by the judge in person, lest it be deemed invalid. The judge shall ensure that the investigations and activities carried out will have no impact on the free exercise of the profession of journalism and will not prevent or cause an unjustified delay in the dissemination of information.

Article 241

Searches of university facilities

A search of university facilities must be supervised by the judge in person, lest it be deemed invalid. The senior official of the facility in question or his representative must be in attendance.

Article 242

Seizure of items following a search or inspection

Items found in a search or inspection shall be seized in accordance with the following articles.

CHAPTER IV SEIZURES

Article 243

Object, formalities and regime

1. Pursuant to a reasoned decision by a judge or by the Ministry of the Public Prosecutor, as applicable, items may be seized that have been used or were intended to be used to commit a crime, or that represent the proceeds, result or gain from the commission of a crime, as well as any items that may have been left by the perpetrator at the scene of the crime and any other items that may be used as evidence.

2. Whenever possible, such seizure shall take place with a judicial authority in attendance.

3. Police bodies concerned with criminal investigations may make seizures as a result of searches or inspections in accordance with the provisions of this Code or when there is urgency or when a delay in obtaining evidence poses a risk, and accordingly such a seizure must be confirmed by the competent judicial authority within 48 hours, lest it be deemed invalid.

4. The person concerned shall be given a copy of the decision if he is present when the seizure takes place.

5. The items seized shall be kept together with the case records when this is possible or, when it is not possible, they shall be entrusted to the safekeeping of the court official assigned to the case or to a depositary, with full particulars being recorded in the case records.

6. Any seizure authorized, ordered or confirmed by the Ministry of the Public Prosecutor may be challenged before the competent judge within a period of five days.

7. A challenge pursuant to the preceding paragraph shall be decided upon independently, and the sole outcome of the challenge, if it is upheld, shall be the return of the items seized.

Article 244

Seizures of correspondence

1. Letters, parcels, postage stamps and related items, telegrams or any other correspondence may only be seized, even in post and telegraph offices, if so authorized or ordered by a judge's decision and if there are sound reasons to believe that

- (a) the correspondence was sent by the suspect or addressed to him, even if under some other name or through some other person,
- (b) a crime has been committed that is punishable by a maximum penalty of more than three years' imprisonment,
- (c) the seizure will be highly worthwhile in order to uncover the truth or provide evidence, lest the seizure be deemed invalid.

2. It shall be prohibited to seize or in any other way monitor correspondence exchanged between an accused and his lawyer except in the case of correspondence with respect to a criminal deed for which the lawyer is the accused, lest the seizure be deemed invalid.

3. If the seizure is performed by an entity that is not the judge, that entity must immediately turn over the items seized to the competent judge without opening the correspondence or gaining knowledge of its contents.

4. If the judge considers the seized correspondence to be relevant as evidence, he shall have it included with the case records; otherwise, he shall return it to its rightful owner, in which case it may not be used as evidence, and the judge shall be bound to maintain the secrecy of the contents of the seized correspondence that was of no interest as evidence.

Article 245

Seizures from the offices of professionals having a requirement of secrecy, from media premises, or from university facilities

1. For any seizure from a lawyer's office or domicile, or from a physician's surgery, or from the offices of other professionals who have a requirement of secrecy, or from media premises or from university facilities, the provisions applicable to inspections shall apply.

2. In those cases referred to in the preceding paragraph, it shall not be permissible for documents covered by professional secrecy to be seized unless they themselves constitute the object or element of a crime, lest the seizure be deemed invalid.

3. The provisions contained in paragraphs 3 and 4 of the preceding article shall also apply.

Article 246

Seizures on bank premises

1. The judge may seize documents, deeds, securities, sums of money or any other items deposited with banks or other lending institutions, even if they are held in individual safes or safe-deposit boxes, if he has sound reasons to believe that such items relate to a crime and will prove highly worthwhile in order to uncover the truth or provide evidence, even if the items in question do not belong to the accused or were not deposited in his name.

2. The judge may examine bank correspondence and any other bank documentation in order to identify the items to be seized pursuant to the preceding paragraph.

3. The examination referred to in the preceding paragraph shall be carried out personally by the judge, assisted, where necessary, by police bodies concerned with criminal investigations or by qualified technical personnel. All persons taking part shall be bound to maintain the secrecy of all information obtained in the course of the examination that is of no interest as evidence.

Article 247

Duty to present documents; professional secrecy, operational secrecy and State secrecy

1. The persons indicated in Articles 185 and 186 shall present to the judicial authorities, upon request, any documents or other items that they have in their possession and that are subject to seizure, unless they refuse the request by invoking professional secrecy, operational secrecy or State secrecy in writing.

2. If the refusal is based on professional or operational secrecy, the provisions contained in paragraphs 2 and 3 of Article 185 shall apply.

3. If the refusal is based on State secrecy, the provisions contained in paragraph 2 of Article 187 shall apply.

Article 248

Copies and certifications

1. Copies of the documents seized may be included in the case records, in which case the originals shall be returned. If it is necessary to retain the original, a certified copy or extract shall

be made and given to the document's rightful owner. Both on the copy and in the certification, express mention shall be made of the seizure.

2. Upon request, a copy of the seizure order shall be given to the rightful owner of the documents or items seized.

3. If a seized document is part of a bound volume or register from which it cannot be separated, and if the judicial authority does not make a copy of it, the bound volume or register shall be deposited with the court.

4. Upon request, officials may, with the prior authorization of the judicial authority, provide copies or certified extracts of those parts of the volume that are not subject to seizure.

Article 249

Safekeeping of seized items

1. If the provisions contained in paragraph 5 of Article 243 do not apply, seized items shall, if possible, be held for safekeeping in the office of the court clerk or in some other appropriate location in the court's offices. If that is not possible or convenient, the judicial authority may order that the items be held for safekeeping in some other location, for which purpose it shall name a trustworthy depository.

2. When the seized items are turned over to the depository, he shall acknowledge his obligation to hold the items and release them when so requested by the competent judicial authority, and shall be warned of the penal consequences should he fail in his duty of safekeeping. The depository may be required to post a security bond.

3. All points mentioned in the preceding paragraphs shall be noted in the case records.

Article 250

Placing of seals

Wherever possible, the seal of the judicial authority shall be placed on the items seized, with identification entered for court purposes, and the seals shall be signed by the judicial authority and by an officer of the court.

Article 251

Items that are difficult to store, subject to deterioration or perishable

1. In the case of documents and other items that may be altered or that are difficult to store, the judicial authority shall order that copies be made and that photographs be taken or other reproductions made, and shall order that they be held for safekeeping in accordance with the provisions of Article 249.

2. If the items seized are expensive to store, subject to deterioration, perishable or dangerous, the judicial authority may, as appropriate, order that they be sold, destroyed or donated for community purposes.

Article 252

Removal and replacement of seals

1. Whenever it is necessary to remove the seals, the judicial authority shall check that the seals have not been broken and that the seized items have not been altered.

2. Once the action for which it was necessary to remove the seals has been completed, new seals shall be placed on the items in the presence of the judicial authority and in accordance with the provisions contained in Article 249.

3. When the time comes for the seals to be removed permanently, the procedure to be followed shall be that laid down in paragraph 1.

Article 253

Period during which seized items are held, and return of seized items

1. When it is no longer necessary to retain the seized items for evidential purposes, they shall be returned to their rightful owner, although the judicial authority may subsequently require him to provide the returned item again at a later time.

2. For the purposes indicated at the end of the preceding paragraph, a security bond may be required.

3. When the court's finding in the case has been handed down, the seized items shall be returned to their rightful owner unless they are declared to have been forfeited to the State.

4. The preceding paragraphs shall not apply in a situation where the seized items belonging to the accused or to the party having civil liability are to be retained by virtue of preventive confiscation pursuant to Article 298.

Article 254

Procedure to be followed if it is difficult or impossible to return seized items

1. The owner of the items in question shall be notified of a decision ordering that they be returned.

2. If, within 60 days after such notification, it is not possible for any reason to return the items, any deeds, securities or sums of money shall be placed on deposit, and any remaining items shall be sold and the proceeds from such sale, after deducting the costs incurred for the safekeeping of the seized items, shall likewise be placed on deposit.

3. No items having a high scientific, historical or artistic value shall be sold; instead, such items shall be entrusted for safekeeping to the government agency responsible for culture.

CHAPTER V

INTERCEPTION AND RECORDING OF TELECOMMUNICATIONS

Article 255

Admissibility

1. The interception and recording of telephone conversations or communications by means of electronic mail and the like may only be ordered or authorized by a judge's decision if there is reason to believe that such action will be highly worthwhile in order to uncover the truth or provide evidence in regard to the following crimes:

- (a) crimes punishable by a maximum penalty of more than three years' imprisonment;
- (b) crimes against freedom or sexual self-determination;
- (c) terrorism, violent crime or highly organized crime;
- (d) crimes that violate the proper protection of minors;
- (e) crimes relating to drug trafficking;
- (f) smuggling;
- (g) insults, threats, coercion, intrusion into a person's private life, disruption and harassment, when the telephone is the means used to carry out such acts.

2. An order or authorization to intercept and record telephone conversations or communications may only be given with reference to suspects, or with reference to other individuals concerning whom there is evidence that they receive communications from the suspects or send communications to the suspects or that the suspects make use of their telephones.

3. A decision that orders or authorizes the interception and recording of telephone conversations and communications must set out the grounds on which it is based and fix a limit on the period of time over which such interception and recording is to take place. That time limit may not exceed three months, but it may be renewed for further periods of the same duration if the same admissibility criteria continue to exist.

4. It shall be prohibited to intercept or record conversations or communications exchanged between an accused and his lawyer or individuals bound by professional secrecy except in a case where such interception has to do with a criminal deed in which the lawyer of the accused is strongly suspected of also being the author of a crime, provoking a crime or being complicit in a crime.

5. The provisions contained in this article and in the articles that follow shall also apply to communications between individuals present at the same location.

Article 256

Operational formalities

1. A record shall be drawn up concerning the interception and recording referred to in the preceding article, and it, together with the recorded tapes or analogous materials and an indication of the passages on the recordings or analogous materials that are considered relevant as evidence, shall be presented within five days to the judge who ordered or authorized the interception and recording and to the Ministry of the Public Prosecutor which requested it.

2. The provisions contained in the preceding paragraph shall not prevent the competent police body concerned with criminal investigations from being informed of the contents of the intercepted communications so that it can take such precautionary measures as may be urgently required in order to preserve the evidence.

3. If the judge considers all or any part of the material collected to be relevant as evidence, he shall order that it be transcribed and that the transcription be included in the case records.

4. The accused and his interlocutor, and anyone else whose conversations were listened to, may examine the transcription referred to in paragraph 3 in order to know the content of the recordings, and may at their own expense obtain copies of the materials referred to in that paragraph.

5. The provisions of the preceding paragraph shall not apply in a situation where such action was ordered as part of the preliminary phase of an investigation and the judge who ordered the action has reason to believe that, if the accused or his interlocutor should become aware of the transcription or the recordings, that could be prejudicial to the investigation or to the ACP.

6. Without prejudice to the provisions of Articles 110 and 115, the accused and his interlocutor, and anyone else whose conversations were listened to, may ask the judge to order the transcription of materials not previously transcribed, for which purpose they shall specify which relevant items they believe to have been omitted or to have been cited out of context in the transcription referred to in paragraph 3.

Article 257

Retention and destruction of documents

1. The materials that are gathered but not transcribed shall remain accessible solely to the Ministry of the Public Prosecutor, and shall be destroyed when the final decision in the case is handed down, and all persons taking part shall be bound to maintain the secrecy of all information obtained in the course of the operations.

2. Where documentation is demonstrated to be unnecessary for purposes of the proceeding, the interested parties may, however, ask the judge who ordered or authorized the recording to have the documentation destroyed.

3. Where documentation is destroyed, such destruction shall be carried out under the judge's supervision, and such action shall be recorded in the case records.

Article 258

Invalidity

Should the provisions laid down in Articles 255 to 257 not be fulfilled as required, the evidence obtained shall be invalid.