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STARTUL, S.L.

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LEY ORGÁNICA 5/1995, DE 22 DE MAYO, DEL TRIBUNAL DEL JURADO

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ORGANIC ACT 5/1995, DATED MAY 22, ON JURY COURT

JUAN CARLOS I

KING OF SPAIN

To all whom this Act shall be seen and understood:

be it known that: The Spanish Parliament has approved this Organic Act and I do enact the same as follows:

PREAMBLE

I

CONSTITUTIONAL BASIS

Article 125 of the Spanish Constitution of 1978 establishes that «Citizens may engage in popular action and participate in the administration of justice through the institution of the Jury, in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts».

The texts of our Constitution satisfy those guidelines, which may be deemed a constant feature in the history of Spanish constitutional law. Each period of freedom has meant the enshrining of the jury; as well as in the Cadiz Constitution of 1812 and in those of the years 1837, 1869 and 1931. On the contrary, each period of regression of public freedoms has eliminated or considerably restricted that instrument of citizen participation, in parallel and as a complement to the restrictions of the rights as a whole and to the instruments of participation in public affairs.

An instrument of indisputable liberal roots is therefore taken up based on the undeniable fact that, from the first outline in 1820 until its suspension in 1936, a few legal institutions have suffered from a critical purification –and therefore have gained it– as noticeable as the Jury Court. This fact has enabled the extraction of the enormous mass of loose data, experiences and precedents that have facilitated the entire acquisition of the Institution.

Over those conceptions supporting or detracting the Jury, our Basic Rule unites the jury instrument with two fundamental rights: The direct participation of citizens in public affairs, concerning Article 23.1 of the Spanish Constitution, and the right to the ordinary Judge, as set forth by law concerning Article 24.2 of our basic text.

Indeed, we are facing, on the one hand, a form of exercise of the subjective right to participate in public affairs, pertaining to the fields of "status activae civitatis". Its exercise is not carried out through representatives, but through the direct exercise as the citizen personally accesses to the status of Jury. Therefore, the representative character of the Institution should be ruled out and its participative and direct character must be exclusively recognized.

For this reason, it can be assumed that the Institute that is regulated differs from other models due to the particular way in which the rights and duties of the citizens are articulated to participate directly in a real power of the State. We are facing a "right-duty", which is reflected in the legal text when adopting coercive measures to ensure the compliance of the obligation and, consequently, the establishment of those other duties aimed at mitigating, as far as possible, the excessive hardship of compliance with duty through the remuneration of the function and compensation of the expenses which may arise from its exercise. The Act is based on the idea that the democratic State is marked by the participation of the citizen in the public affairs. There is no reason among them to exclude those referred to establish justice, but, on the contrary, a procedure that satisfies that constitutional right in the fullest possible way must established.

It is not a question, therefore, of relying on the capacity of citizens, as if the negative alternative is tolerable in a democratic system. It is only a matter of overcoming any explanatory reasons, not of its disputable historical failure, but of its authoritarian and undemocratic cancellation.

But the institution of the jury is at the same time and in a complementary way, a manifestation of Article 24 of the Constitution that declares that everyone has the right to the ordinary judge predetermined by law. It therefore fulfils a necessary task for due process, but it does so on the basis of a different perspective from the one attributed to it in its reception in the bourgeois liberal state. There is no reluctance to professional Judges. It is not a matter of establishing an alternative and parallel justice, and even less a justice which is contrary to career Judges and Magistrates' one to which Article 122 of the Spanish Constitution is referred. Instead, it is a matter of establishing procedural rules that satisfy at the same time and in parallel all the demands of criminal proceedings with the right and duty of citizens to participate directly in the constitutional task of judging.

Article 125 of the Constitution implies, inevitably, an unequivocal constitutional placement that forces the long break of limited experiences and expectations regarding citizen participation in public affairs. In the mentioned article, the institution of the Jury reappears with a renewed load of suggestions and nuances capable to give a sense and to promote social reality, which nowadays is sufficiently contrasted and which demands an urgent change in the ways of administering justice.

As a result, its development is not only a constitutional imperative, but also an urgent necessity as a decisive piece of an thorough reform of the whole Administration of Justice, which is perceived as an urgent need by many citizens.

This reality has also been recognized by the General Council of the Judiciary. Thus, in the reports made in 1991 and 1992 and in the Circumstantial Relation of the Needs of the Administration of Justice for 1993, in the section referring to the legislative amendments which were deemed convenient for the proper exercise of the jurisdictional power tending to achieve a streamlining of the processes, when referring to the criminal process, it is emphasized that «The implementation of the Jury, as set forth in Article 125 of the Spanish Constitution, will require a substantial amendment of the institution through its incardination in the procedural system, but this shall not imply a delaying element of criminal justice».

With the passing of this Act, a qualitative step forward is taken from a technical-legal perspective, aimed at closing the basic model of Justice designed by the Constitution and the Organic Act of the Judiciary, facilitating the citizens' involvement in the Administration of Justice. The establishment of the Jury Court must be considered as one of the constitutional contents still to be developed. A constitutional mandate, many times deferred, is fully met by the regulation of this Act and one of the basic pieces in the functioning of the Administration of Justice designed by the constituent is established.

II
THE JURIES CITIZENS

We have already noticed that this Act is based on the fact that the Jury implies the appearance of the right to participate and this undoubtedly determines that the fact the truly and essential issues to be clarified are those concerning the Jury Court area of knowledge and, within it, the role recognized to the participating citizens.

An elementary judiciousness advises the graduation in the institution process, both when selecting the number of issues and the nature of them. There are reasons for its proper implementation which advise that all those who have to take part in this type of processes become familiar with the process peculiarities, which are so different from the current way of holding the trials. The precision of the object of the trial, the arguments of the parties, the evidentiary material to be dealt with, the language to be used and the content of the resolutions must vary substantially.

The Act takes full account of the fact that the Jury trial is a full expression of the basic procedural principles of immediacy, an evidence formed based on free conviction, exclusion of illegal evidence, publicity and orality. For this reason, crimes where the typical action lacks excessive complexity have been selected, as well as those crimes where the component normative elements are especially suitable for being evaluated by citizens who are not professionalized in the judicial function.

The jurisdiction area concerning the Jury Court is laid down in Article 1. In the future, however, the legislator will undoubtedly appreciate the progressive extension of the crimes to be prosecuted in the light of the experience and social consolidation of the institution.

The formation of the decision-making body within the Jury Court requires a legislative response. Its success does not necessarily solve the old logical question about the division between fact and law.

The authors of our old Jury Act sponsored a limited intervention to proclaim the proven fact to the juror, connecting the historical origin of the institute with the testimony of the neighbours as a formula to decide the litigation.

Such an origin is debatable and, furthermore, it is not always possible to decide on the veracity of a historical statement, which constitutes the typical estimation of the crime, without thinking of legal assessments. But, in any case, and this is the most relevant part, the model suggested now by law reaches a legitimizing with a depth then unattended. That is why, in the mentioned Act, the Jury does not only decide whether or not the fact is proven, but also values aspects such as the normative components that give rise to the exemption or not of criminal responsibility.

In the mentioned Act, the choice made regarding the selection process of juries is consistent with the consideration that their participation constitutes a right and a duty. Under the conditions that enable the full exercise of civil rights, Citizenship constitutes the index of presumed capacity not needed of other exclusions or accreditations of proven capacity, except those ones that would not significantly impede the exercise of the function of prosecution.

The benefit of participation as widely accepted as possible leads to the recognition of a generous pretexts system which is forwarded to the wisdom of the jurisdiction has to deem it.

The selective system is characterized by: a) the succession of stages that ensure the presence of nominees in an adequate amount in order to avoid suspensions in the signals and their anticipated knowledge of their eventual call to intervene; b) the transparency and publicity of the selective process, which includes not only the mechanisms to detect the causes of exclusion, but also the jurisdictional guarantees both for the candidate and, at a later stage, for the parties involved in the trial; by lot from the relevant lists of voters as a system, not only in a democratic way excluding elitist criteria - not even the jurisdiction of scientists - but one which is consistent with the very basis of participation.

It has been considered that the concept of the people would be distorted in the event that this Act was deemed as an exclusion criterion, different from the one indicated above, on the pretext of reaching an additional capacity over the presumed result of inclusion in the census.

But this should not prevent from conciliation between the right to participate in the draw and the right of the parties to seek a certain pluralism in the jurisdictional college. To some extent, the number of jurors to be nominated (nine) tends to increase, but it makes it even more possible for the parties to refuse without having to plead their case based on subjective assessments of the candidate's decision criteria. Although this possibility must be subject to strong limitations of numbers to avoid the unfortunate results produced in historical experience.

III

REQUIRED PROCEDURAL REFORMS AS A GUARANTEE OF THE FEASIBILITY OF THE JURY OPERATION

1

In the so-called intermediate phase

Some have claimed that any procedural speciality should begin where the intervention of the Jury begins, that is, in the oral trial phase. It has been argued that if the jury confines itself to intervening in the oral trial, the formal or mixed accusatory model of the Criminal Procedure Act should not be modified.

Such an opinion ignores compelling considerations:

a) The current system of prosecution through technical judges is based on normative premises difficult to transpose the oral trial before the Jury Court, which could determine the failure of prosecution by unprofessional citizens if it is maintained. The necessary modifications must inexorably be projected on the preparatory phase of the oral trial.

b) Our Constitutional Court has been establishing a legal corpus that not only enriches traditional prejudices of our procedural law, but which would also be difficult to tolerate it by ignoring law.

Alonso Martinez complained of the custom, which so ingrained in our Judges and Courts. He claimed that the mentioned custom gives little or no value to the evidence of the plenary, seeking mainly or almost exclusively the truth in the summary proceedings practised behind the the accused party. This Act envisages that the oral trial before the Jury Court should culminate in the eradication of this procedural malformation by practising before him all the evidence.

The consequent risk of excessive prolongation of the act of Judgement advises the introduction of simplification mechanisms. The most essential one is the precise definition of the object of the prosecution to be carried out in the preceding phase.

The current system of decision on the opening of the oral trial appears under two different procedural modalities - according to whether it is an ordinary or an abbreviated procedure . However, in both of them, it is limited to a purely negative decision that is dysfunctional for jury trial. For this reason, the prototype had to aim for one or another procedure, and it is difficult to explain the reasons why the procedural unit of the latter did not require an equal unity, transcending the intermediate phase or accusation trial to that of prosecution.

On the other hand, the merely negative nature of the decision on the opening of the oral trial is unfit for the accurate definition of the object of the trial, which is an essential estimate to ensure a development of the trial that guarantees the absence of confusion of the facts to be proven. This shall avoid the delays inherent in that lack of objective precision and as well as allow the undesirable «reproduction» of the summary or prior proceedings with the adequate and impartially elaborated information to be dispensed

with. Our Constitutional Court has also proclaimed the need to promote the procedural debate in the intermediate stage of the proceedings in conditions concerning the contradiction and equality of accusation and defence.

With such precedents the Act has deemed appropriate:

a) To opt for a resolution on the opening of an appropriate and well-founded oral trial. Of course, a judicial review of the opening of the oral trial can hardly be carried out without the preliminary formalization of the accusation, as a part of the doctrine had warned. In this way, prior judicial control over the reasonableness of the indictment is not limited to resubmission. On the other hand, the area of decision attributed to the court is increased and it is possible to adopt the decision of dismissal on any of its grounds.

b) Such control culminates not only by deciding a generic viability of the oral trial but by stating that specific facts, of the multiple possible allegations of accusation and defence, must be the object of the probative activity and decisive for its resolution at the trial.

It shall be It retained the fact that the content of the previous decision stands in one of the most relevant conditions of success or failure of the Institution.

c) At the same time, the content and function of such a resolution relate to the exclusion of the indictment, in mutual demand. This indictment would be required by the necessary system unit with regard to indictment.

2
In the pre-trial phase

The option of the Act on the system for adopting the decision that is sent to the oral trial is projected on the stage of the procedure preceding it:

a) By the guarantee of impartiality of the judicial body that is specially reinforced. In this way, the sufficiency and success of the investigation must be valued, but at the same time, it must be taken into account conflicting pretensions and resistances, or in opposite directions. The former ones are formulated by the prosecution and the latter ones by the defence. Likewise, the probability of veracity of historical statements and of transcendence regarding legal qualification will be assessed.

As a matter of simple coherence, the adopted model adopted requires to allow the relocation of the Judge of Instruction that will then resolve on the opening of the oral trial, as soon as it is established the imputation of a specific justiciable fact to a specific person. This shall be made in a reinforced position of impartiality, with the function of controlling the imputation of the crime through prior assessment of its plausibility and with the power to investigate in a complementary way the facts affirmed by the parties.

It is unavoidable is that an excessive tendency towards general surveys, endless in time, does not contribute to the failure of the feasibility of jury trial.

On the other hand, the reproach towards the idea that the system governing the Act leaves without mechanism of effectiveness the principle of enforceability of the

criminal action can scarcely be admitted. Leaving the indiscriminate accusation on a possible attitude of inhibition of the Public Prosecution Service to one side, the mentioned reproach forgets that in order to initiate this procedure, a complaint or lawsuit must have preceded. This complaint shall be made by someone who, other than the Public Prosecution Service, may supplement the lack of public accuser, given the successful constitutional provision of the popular action. To that end, the call tends to the to the public action which can be done by dissenting Judge in the planed manner for the interim stage in our Criminal Procedure Code within the ordinary procedure.

It is forgotten when the qualification of the Examining Magistrate is criticized in the determination of the fact and person to be investigated. It similarly occurs in the current system of the Criminal Procedure Code in which, in short, it will only be subject and taxable in the oral trial as long as it is required by the accusation. On this point, The Act follows the same principle as the one accepted by the current procedural legislation.

b) For the requirement of judicial imputation prior to any accusation, since the decision on the opening of the oral trial requires as an estimate the fact that this requirement has been formalized.

The Constitutional Court denounced how, for almost a century, the procedural system allowed, between you and me, the Investigating Magistrate to ask without communicating what he was looking for and to question a suspect without letting him know what and why he suspected him or her, without making possible his self-defence and without providing assistance from counsel. The Spanish Constitution of 1978 and the reform of the Criminal Procedure Code forced a crucial bias by Act 53/1978. The Constitutional Court recognized the new category of suspect who is attributed a punishable act with fairly good reasons.

The submission of complaints or lawsuits or the existence of an ongoing procedural action that derives the attribution of a crime to a particular person, must be subject to an essential assessment by the judge to decide on the follow-up of criminal case. Such a decision may not be arbitrarily delayed, and according to that doctrine, investigations verified without prior communication, where appropriate, should be sanctioned as null and void.

The relationship of the aforementioned doctrine with that which promotes the debate on an equal basis and with which it demands that whoever is going to perform functions of prosecution does not make accusations, has determined that the law decides by an instruction that obliges to the following from the moment in which the objectionable fact and the person are determined and this procedure corresponds:

a) that someone other than the Judge makes an imputation, just before starting the investigation,

b) that the pursuit of the mentioned imputation requires an assessment by a court preceded by the opportunity for discussion between the parties,

c) that during the investigation that the Judge considers reasonable to follow, this Judge maintains a position different from that of the parties' one, and:

d) that this Judge, preserved in a certain impartiality, controls the origin of the opening or not of the oral trial, in a positive and not only negative way, with precision of the object of the judgement and the decision of the information necessary to submit to the Jury Court. This Judge shall prevent, however, the provision of summary material that could limit the effective incidence of the principles of orality, immediacy and celerity required in such prosecution.

IV
THE ORAL TRIAL

1
Preliminary matters.

The concern for an adequate preparation of the oral trial is obstinately directed to prevent its failure. It also leads in the law to intensify the role assigned to the Magistrate in that preamble of the oral proceedings already open.

The decision, adopted by the Instructor on the opening of the oral trial, can undoubtedly be the subject of a dispute between the parties. The one that concerns whether a trial's origin is such or not, receives a treatment in law similar to the one of the Criminal Procedure Code. An appeal against dismissal and impossibility to appeal, notwithstanding the fact that in the last case, the parties may raise the previous issues or exceptions referred to in Article 36 of the Act when appearing.

However, the discrepancy may arise in relation to particular aspects of the decision referred to the subject of the trial. In this case, the technique of the appeal is unnecessarily delaying, since the same objective can be achieved through the approach of the claim as a matter prior to the Magistrate who has to preside over the Court.

This reviewing power is complemented in the Act with the one concerning the direction of the debate that results in the formulation, adjusted to the structure of the verdict of its object.

The decision on the admission of evidence, subject to its relevance, is attributed in the Act to the Magistrate who had previously set the object of the trial and with it, the objective facts of evidence. It is also up to him to assess the impossibility of the postponement that requires the advanced practice and, ultimately, resolve on any allegations of unlawful probation.

2
Jury Court set up.

The Jury Court does not constitute, and is one of its most defining marks, a permanent judicial body, which always required the indication of the period when the constituted was to be known. In this way the causes to be known were determined on the basis of two data: the time for which the Court and the Judicial Party from which the causes had been formed.

The first criterion has been replaced in the Act by the formation of a Jury for each cause, marking the note of temporality of the judicial body. Several reasons advise this solution. The first one, at least, at the beginning of the reinstatement of the Institution, does not place on a few jurors the burden of examining all the cases to be judged in a period, sharing among more citizens that work. The second one which, as a result of a greater rotation in the performance of the function, contributes to the achievement of one of the most beneficial effects of the Institution, namely: that the experience of the exercise of the function of judging acts as a citizenship school for as many citizens as possible.

To maintaining a provision setting out the sessions has now lost its necessary character. Nevertheless, has in common with it not only the symbolic effect, recalling the transitional nature of the judicial function in the citizen, but also a pattern of organization of indications. In accordance with it, the draw may be held with enough time for a certain period in a single act. At the same time, when Jurors are formed for each case, nothing will prevent the nature and circumstances of the mentioned cause from advising a pre-constituent lottery of the Court on a date to be indicated wisely by the Presiding-Magistrate.

The second option adopted in the Act is not insignificant in relation to the origin of jury nominees. The neighbourhood has historically been one of the essential notes of the juries. Hence, these jurors must be at least the from province where the event has taken place, if they are not of the locality or of the judicial party.

Caution advises the opening of timings as far as possible that allow the advanced communication of any cause that may imply the defect of number of working jurors on the day appointed for the trial. The Act responds to this with the absence of rigid preclusions and the anticipation in the formation of lists of nominees to become members of the jury, as well as the forecast of the reiteration of drawings before that day.

The Act provides for a possible challenge by the parties present at the beginning of the sessions. The basis of the admitted objection is to achieve, not only the impartiality of those called to judge, but also that such impartiality presents itself as real before those who come to urge Justice; even without allegation of cause by the party filing the objection. But such an ideal, which would require the absence of limits in the objection, must be combined with the requirements that the institution should not be frustrated in its effective functioning.

3
The Discussion.

Even when law is only limited to a reference to common norms, it would be a mistake to forget one of the essential keys to success or failure of the Institution is found indeed in the direction of the oral trial debate. If it failed, perhaps the failure would be so attributable to the lack of accuracy of the technical Judge in the preparation of the trial to which the law refers, as to the non-professional citizen who lacks the required aptitude for the performance of the function assigned to it.

The brevity of the reference in this section is due to the fact that before, as stated, law has been concerned with resolving essential aspects. On the one hand, there is the meticulous precision of the “thema probandi”, rigid and intelligible reference that must guide inexorably what in the oral trial may occur. That determination of the purpose of the trial is presented by law as preferable to the experiences of illustration to the Jury by means of notes or relations. This determination is indeed articulated in the form in which the evidence for the verdict must be examined, and in an intelligible language to the non-professional citizen.

On the other hand, the exclusion of the presence, even physical, of the summary in the oral trial avoids undesirable confusions from observable cognitive sources, thus helping to guide the scope and purpose of the evidentiary practice to be performed in the debate.

In law, orality, which is the immediacy and publicity in the evidence that must repeal the presumption of innocence; has to affect one of the issues that has happened to be more controversial, which is the value of evidence given to the preliminary or pre-trial proceedings and that is reflected in the text of the same.

One aspect that deserves special consideration is the participation of the Jury in the evidentiary activity. That possibility moves to the jury, that is indeed now who has responsibility for the assessment of the veracity of the imputation. This is performed in the same way that our Criminal Procedure Code has opted for a transaction between the principle of contribution of part and that of investigation ex officio, authorizing the Court to contribute to the production of evidence in the oral trial.

4
Jury dissolution.

The Jury dissolution constitutes undoubtedly one of the most striking developments regarding our historical experience. The constitutional proclamation of the fundamental right to the presumption of innocence could not fail to project its influence on the proposed Act. An influence that is largely tributary of the model in which that constitutional guarantee arose.

As a precedent in comparative law, it is necessary to mention the provisions of the federal rules for criminal procedure in the United States of America, which allow for the dissolution of the Jury after the end of the trial of both parties, if such evidence is insufficient to support the conviction for such offence or offences.

Undoubtedly, the scope and effects of the right guaranteed by Article 24.2 of our Constitution is debatable and discussed. The Act starts from two premises: a) the distinction in the content of the guarantee of an objective aspect concerning the existence of a true evidence and another, which is subjective and which refers to the moment of evaluation of the former; and b) the distribution of duties between the Magistrate and the jurors, attributing to the former the control of that objective dimension as a legal question.

Such control is laid down in this Act in considerations on the legality or enforcement of guarantees in the evidential production. But it is also settled in the objective

appreciation of the existence of incriminating elements. This is less related to the sufficiency to justify the sentence. This sentence is also part of the content of the fundamental right but it requires the work of valuing the means of proof and such job corresponds to the Jury.

In short, the criterion that separates the assessment of the existence of evidence regarding its sufficiency, may be the ruling in the jurisprudence of the cultural area from which the guarantee arises: there will be no evidence if this should be rejected, even in the interpretation of the evidence produced more beneficial to the thesis of the accusation.

The assignment of the Magistrate to such an obvious aspect is not untimely at the end of the debate. It is true that before the Judge will have already assessed the existence of indications that justify the opening of the oral trial, so this is liable to mislead to the believing that the minimum evidentiary, legal and charge activity has been reached. Such a thesis would not know that there is no real evidence until the oral trial, that the assessment of its existence corresponds to the Authority of trial and, most important, that during the trial the illegality or absolute lack of strength incriminating the means of proof available may be revealed.

Experience also advises this historical measure that gives notice of one of the most widespread criticisms regarding the operation of the Jury: the issuance of surprising verdicts. Once again, the Act places a high degree of confidence in the Judiciary as a guarantee of the proper functioning of the Institution.

V
THE VERDICT

1
The Purpose

Alonso Martinez considered that extending jurisdiction to the «nomen iuris» of crime was an expression of the confusion between fact and law and, even more, it involved the invasion of powers of the legislature by the Jury. The latter point does not seem easily compatible and a split of the historical and normative aspects in the prosecution is not easy. On the other hand, the reproach for the absence of motivation towards organizational systems of the Jury that allow the issuance of a verdict made only by citizens has been permanent.

This Act tries to give a cautious response to both objections On the one hand, objections are replied because the fact is not considered conceivable from a reductionist naturalistic perspective, but, precisely and exclusively, as legally relevant. In a particular selection of its protean accident rate, a fact is declared proven only when it constitutes a crime in legal terms.

Depriving the Jury of the consideration of this unbreakable link between the configuration of historical data and its normative consequence is, on the one hand, useless since the discussion has warned them about the consequence of their decision

on the proclaimed truth and they can not omit in their decision the reference of the consequences of his verdict supposedly only factual.

But, moreover, such a split would cause one of the causes of greater reproach to the Jury Court according to our experience. The difficult articulation of the issues produced permanent discussions on the appropriateness of verdicts and sentence, excluding the banned aspects of legal technique.

It was also necessary to choose between the single response system or sequential articulation. That formula is more suitable for a conception external to that in full validity and to the supremacy of the principle of legality. Where the jury can substitute the generic and deductive criterion of the legislator for its conception in the concrete case since irresponsibility, the true verdict does not need articulation nor of motivation.

In our system, the Jury must inexorably abide to the legislator's mandate. And such adjustment is only amenable to control insofar as the verdict externalizes the course of argument that motivated it.

And the Act tends to the above mentioned by:

a) Confirming to the Magistrate the rational structure of the facts to be proclaimed as proven in a logical sequence.

b) Claiming as a criterion the necessary non-ambiguity of the question.

c) Allowing the Jury a flexibility in order to introduce the qualifications or complements that allow the adjustment of the verdict to their conscience in the examination of the fact without abdicating the mandatory answer to the question that is formulated. In addition, this will get to avoid foreseeable verdicts of astonishing innocence that would carry the rigidity in the request of responses that put the Jury in unbearable discomforts when expressing its opinion. This avoids the list of questions to be answered with monosyllables, because it can not collect the full opinion of the Jury. But, at the same time, it avoids the system already rejected by a qualified doctrine to confer it the burden of writing the proved fact.

d) Requiring the Jury that its proven ability to decide on the different version reaches the required degree for the presentation of its reasons. It is true that the presentatio0n of what had been proven explicitly explains the argumentation of the conclusion of guilt or innocence. But nowadays it does not satisfy the constitutional requirement of reasoning. The motivation for such arguments is also necessary. And, of course, it is possible if it is considered that in some way it requires special artifice and the Jury always has the possibility of requesting the necessary advice.

e) Adding the pronouncement on the assessment that the fact deserves depending on its legal classification to the previous content. For such pronouncement, the difficulty will not lie in a task of technical qualification of the fact, but in choosing among its different versions. Once again, Magistrate's caution and good work is a guarantee of the success of the model.

f) The formation of the object of the verdict can not dispense with the consideration of the object of the proceedings as being linked to the allegations of all parties, to the interests of the defence and of the accusation, and also to the right of the latter to participate in the final drafting through the timely hearing.

2
Instructions

In these instructions is another of the conditions of success or failure of prosecution by Jury. But its justification, which is to compensate for the shortcomings that may arise from the technical ignorance of law, prevents them from being extended to aspects in which jurors must and can act spontaneously.

Therefore it is considered appropriate to delete one of its contents whose inclusion determined a great controversy in our past historical experience: the summary of the evidence presented.

However, technical advice can not dispense with the warning of non-compliance with those evidentiary activities that suffer from legal defects forcing them to discard them. It seems appropriate that the instructions are brought under the control of the parties so that they are convinced of their impartiality and, if not, they have the opportunity to address the offence; to the extent that the instructions are significantly important in determining the verdict.

The need for Jury training and spontaneity are objectives that can be hampered and that make it necessary to conciliate. Thus, even if the Jury shall hold meetings to discuss without intermediary interferences, it was not aimed to dispense with the permanent availability of access to the advice that they freely want to demand.

The possibility allowed by law that states that the Magistrate may impart instructions that avoid an unnecessary prolongation of the deliberation even without the request of the Jurors, deserves special consideration. It is a question of avoiding that the inexperience of the decision-makers together with their reluctance to urge the investigation originates an unjustified delay in the issuance of the verdict that would affect the prestige of the Institution.

3
Deliberation and voting

The confidentiality of deliberations must not prevent the essential responsibility of the Jurors. Therefore, the vote is imposed by roll call, which allows to identify the abstention prohibited in the Act.

Undoubtedly, the rule of decision-making that requires unanimity in its sense to produce the verdict is presented as the most appropriate to force the jurors to a richer debate. However, this rule implies a very high risk of failure in case such unanimity is not achieved. An appropriate compromise between the objectives of an indirectly voting deliberation since its inception, by the formation of simple simple majorities, and the avoidance of excessive dissolutions by the Jury, which may be motivated by the simple

and unjustifiable obstinacy of one or a few jurors, has advised a less demanding rule of decision-making at least in the beginning of the operation of the Institution.

The Act rejects the possibility, historically admitted, of returning the verdict for discrepancy in its sense for the proper working of the Institution. There are defects that would lead to its revocation by means of an appeal given its opposition to law. But this should not prevent defects can be remedied by the intervention of the Magistrate, with the presence of the parties, making these defects present and indicating what is necessary to the Jury for such rectification.

VI
SENTENCE

The attachment of the Magistrate to the verdict is reflected in the understanding that this must be done in the sentence and in the sense of acquittal or conviction of the ruling. The Magistrate, who is also bound by the legal title of the sentence, will proceed to the necessary qualification in order to determine the degree of execution, participation of the convicted person and on the origin of the circumstances that amend the responsibility and, consequently, the concretion of the applicable penalty.

It should be emphasized that the concern of the law for the motivation of the resolution also leads to require the Magistrate to justify why he or she deemed that there was such evidence on the basis he or she authorized the verdict, regardless the motivation that Jurors make of the assessment of existing evidence. In this way, the Act intends to block the criticisms raised regarding the formula for separating the decision-making body, regarding both the non-severability of fact and law and the alleged irresponsibility for lack of motivation in the verdict and sentence, which should be inherent in such a system, as it is said.

VII
AMENDMENTS OF LEGAL ENTITIES AND PROCEDURAL SPECIALTIES

1
Amendment of the Organic Act of the Judiciary

The criteria contained in the Act reflect substantially the principles that Article 83.2 of Organic Act 6/1985, dated July 1, referred to the future Act of the Jury, so once the complete regulation of this institution was approved, such a provision is unnecessary. Considering that the constitutional doctrine has been demanding a uniform regulations text for the development of Article 122.1 of the Spanish Constitution, the aforementioned provision of the Organic Act of the Judiciary has been amended. It has been made to the extent that this Act affects the powers and functions of the jurisdictional entities, establishing in Article 83.2 an obligatory reference to the Organic Act of the Jury Court.

2

The Public Prosecution Service in the pre- trial phase

Although it is the responsibility of the Judge to carry out the summary proceedings, the peculiarities that must govern the procedure before the Jury and the opportunity to consolidate the accusatory principle, make it necessary to strengthen the powers of the Public Prosecution Service. In this way, the initiation and adaptation to the new procedure, as well as the Public Prosecution Service formation together with the Investigating Magistrate and the immediate disclosure of the imputation, according to the terms set forth in Articles 24 and 25 of the Act, also have its procedural framework by incorporating provisions in Article 309, for the ordinary procedure, and in Articles 780 and 789.3 of the Criminal Procedure Code, for the abbreviated one.

It is also consistent to add to Article 678 of the exclusion of the possibility - in proceedings before the Jury - to reproduce in the oral proceedings the issues dismissed by the transfer of Article 36 of the mentioned Act to Articles from 668 to 677 of the Criminal Procedure Code for the handling of incidents by the approach of previous issues, The same consistency is preached on the substitution of the appeal against the self-determination of the declination or the admission of the exceptions of Article 666 of the Criminal Procedure Code, which introduces the appeal, in accordance with the predictable appeal against sentences of the Provincial Court.

3

Precautionary measures

The introduction of the new Article 504 bis 2 in the Criminal Procedure Code, regarding the adoption of precautionary measures of deprivation or restriction of freedom, incorporates a required hearing of the Public Prosecutor, the parties and the defendant assisted by counsel, which is inspired by the accusatory principle. It also abolishes the requirement of ratification of the arrest warrant. In this way, the limitation of the judicial initiative is balanced with the establishment of the benefits of the adversary, without prejudice to the reformable nature of the measures adopted throughout the course of the case.

4

Appeals and appeals in cassation

The new Book V of the Criminal Procedure Code, entitled “Appeals, appeals in cassation and review”, is intended to extend the appeal against decisions and rulings derived from the proceedings before the Jury Court, as well as certain resolutions of the ordinary criminal in the cases of Article 676 of the procedural rule. The new appeal seeks to fill the right of “double examination”, or “double instance”, while its regime sufficiently fulfils the requirement that both the imposed conviction and the sentence are submitted to a higher court, depending on the special nature of the procedure before the Jury, and without prejudice to the proper role that must be exercised, regarding all crimes, the appeal in cassation.

For this purpose, the Act adapts the grounds for challenging the special nature of the procedure and assigns the operative jurisdiction to the Civil and Criminal Courts of the High Courts of Justice, which, apart from the necessary adjustments in personal means, responds to an old aspiration in the jurisdictional delimitation for the knowledge of the appeal.

CHAPTER I
GENERAL PROVISIONS

Article 1. *Jury Court jurisdiction.*

1. The Jury Court, as an institution for the participation of citizens in the Administration of Justice, will have jurisdiction for the prosecution of the crimes assigned to its knowledge and ruling by this or other law regarding the contents in the following categories:

a) Crimes against persons.

b) Offences committed by public officials in the exercise of their positions.

c) Offences against honour.

d) Crimes against freedom and security.

2. Within the area of prosecution provided for in the preceding paragraph, the Jury Court shall be competent to hear and adjudicate the cases for crimes defined in the following provisions of the Criminal Code:

a) Homicide (Articles 138 to 140).

b) Threats (Article 169.1.º).

c) Omission of the duty of relief (Articles 195 and 196).

d) Search of dwelling (Articles 202 and 204).

e) Infidelity in the custody of documents (Articles 413 to 415).

f) Bribery (Articles 419 to 426).

g) Influence peddling (Articles 428 to 430).

h) Misappropriation of public funds (Articles 432 to 434).

i) Illegal fraud and taxation (Articles 436 to 438)

j) Negotiations prohibited to officials (Articles 439 and 440).

k) Infidelity in the custody of prisoners (Article 471).

3. The trial of the Jury will be held only within the scope of the Provincial Court and, where appropriate, the Courts that correspond to the defendant. In any case, those crimes whose prosecution is attributed to the National Court are excluded from the jurisdiction of the Jury.

Article 2. *Jury Court composition.*

1. The Jury Court consists of nine judges and a member of the Provincial Court Judge, who shall lead.

The Judge-President of the Jury Court shall be a Judge of the Criminal Chamber of the Supreme Court or of the Civil and Criminal Chamber of the High Court of Justice, respectively if, due to the defendant appraisal, the trial of the Jury must be held within the scope of the Supreme Court or a High Court of Justice.

2. In addition, two alternate jurors, to whom the provisions of Articles 6 and 7 will be applicable, will attend the Jury trial.

Article 3. *Jury's role.*

1. The jury will issue a verdict stating that the justiciable fact that the Judge-President has determined as proven or not proven. Those other facts that decided to be included in their verdict and which do not imply substantial variation of that one will also be included.

2. The Jury will also proclaim the guilt or innocence of each accused for their participation in the act or criminal acts in respect of which the Judge-President has admitted accusation.

3. During the exercise of their functions, the Jurors shall act in accordance with the principles of independence, responsibility and submission to the law, referred to in Article 117 of the Constitution for members of the Judiciary.

4. Those Jurors who, in the exercise of their functions, are considered to be disturbed in their independence, under the terms of Article 14 of the Organic Act of the Judiciary, may apply to the Presiding-Magistrate to assist them in the performance of their duties.

Article 4. *Presiding-Magistrate's role.*

The Presiding-Magistrate, in addition to other functions assigned to him or her by this Act, will issue a sentence in which he or she will collect the verdict of the Jury and impose, as the case may be, the corresponding penalty and security measure.

He shall also resolve, as the case may be, the civil liability of the offender or third parties in respect of whom a claim has been made.

Article 5. *Determination of the Jury Court jurisdiction.*

1. The determination of the jurisdiction of the Jury Court shall be based on the alleged criminal offence, regardless of the participation or degree of execution attributed to the accused. However, in the case of Article 1.1 (a), it will only be competent if the offence is consummated.

2. The jurisdiction of the Jury Court shall be extended to the prosecution of related offences, provided that the connection arises in one of the following cases: a) That two or more persons assembled simultaneously commit the different offences; b) that two or more persons commit more than one crime in different places or times, if preceded by a concert to do so; c) that one of the crimes was committed to perpetrate others, facilitate their execution or seek their impunity.

Notwithstanding the foregoing, and without prejudice to the provisions of Article 1 of this Act, in no case may the offence of prevarication be prosecuted for connection, as

well as those related crimes whose prosecution may be carried out separately without breaking the facts of the cause.

3. When a single fact can constitute two or more crimes, the Jury Court shall have jurisdiction to prosecute if any of them are attributed to their knowledge.

Likewise, when several actions and omissions constitute a continuous crime, the Jury Court will have jurisdiction if it is one of those attributed to its knowledge.

4. The territorial jurisdiction of the Jury Court shall meet the general rules.

CHAPTER II
The juries

Section 1. General Provisions

Article 6. *Right and duty of the Jury.*

The function of jury is a right to be exercised by those citizens who are not covered by the ground for refusal that prevents it and its performance is a duty for those who are not involved in the cause of incompatibility or prohibition and can not be excused under this Act.

Article 7. *Remuneration and labor and official effects of the performance of the jury function.*

1. The performance of the functions of the Jury will be remunerated and compensated in the form and amount that by regulation is determined.

2. The performance of the function of Jury will have the consideration of compliance with an inexcusable duty of a public and personal nature for the purposes of labour and civil law.

Section 2. Requirements, Disabilities, Incompatibilities, Prohibitions and Excuses

Article 8. *Eligibility to be a Jury.*

The requirements to be a Jury are:

1. To be Spanish and legally of age.

2. To be in the full exercise of their political rights.

3. Literacy.

4. To be a resident of any of the municipalities of the province where the crime was committed, at the time of the appointment,

5. To have enough legal capacity to perform the duties the Jury. Those people with disabilities shall not be excluded of acting as a Jury due to that circumstance. The Administration of Justice shall provide them with the relevant support, as well as the reasonable adjustments in order for them to be able to perform their part normally.

Article 9. *Lack of ability to be a jury.*

Those rendered incapable to be a Jury are:

1. Those convicted of felony crime, who have not obtained the rehabilitation.

2. Those accused and those defendants in respect of whom an oral trial had been agreed and who are under detention, pre-trial detention or serving a sentence for offence.

3. Those suspended in their employment or public office, for the duration of such suspension, in criminal proceedings.

Article 10. *Incompatibility to be a Jury.*

Those rendered incompatible to be a Jury are:

1. The King of Spain and the other members of the Royal Spanish Family included in the Civil Registry that regulates Royal Decree 2917/1981, dated November 27, as well as their spouses.

2. The President of the Government, the Vice Presidents, Ministers, Secretaries of State, Assistant Secretaries, General Directors and similar positions. The Director and the Provincial Delegates of the Electoral Census Office. The Governor and the Deputy Governor of the Bank of Spain.

3. The Presidents of the Autonomous Communities, the members of the Governing Councils, Deputy Counselors, General Managers and similar positions.

4. The Deputies and Senators of the Parliament, the Members of the Legislative Assemblies of the Autonomous Communities and the elected members of the local Corporations.

5. The President and the Judges of the Constitutional Court. The President and members of the General Council of the Judiciary and the State Attorney. The President and members of the Court of Audit and of the Council of State, and the President of entities and institutions with similar nature as the Autonomous Communities.

6. The Ombudsman and his deputies, as well as similar positions in the Autonomous Communities.

7. The working members of the Judicial and Fiscal Career, the Corps of Judicial Secretaries, Forensic Doctors, Officers, Assistants and Agents and other personnel in the service of the Administration of Justice, as well as the active members of the Judicial Police entities . The working members of the Military Legal Defence Corps and the Auxiliary of the Military Jurisdiction and Prosecutor's Office.

8. The Government Delegates in the Autonomous Communities, in the Autonomous Communities of Ceuta and Melilla, the Islands Government Delegates and the Civil Governors.

9. Lawyers working for the Constitutional entities and for the Public Administrations or for any Tribunals, and the working lawyers and attorneys. The university professors of legal disciplines or of legal medicine.

10. Working members of the Security Forces and Entities.

11. Officials of Penitentiary Institutions

12. Heads of Diplomatic Mission accredited abroad, Heads of Consular Offices and Heads of Permanent Representations to International Organizations.

Article 11. *Prohibition to be a Jury.*

No one may take part as a Jury of the Court hearing a case where:

1. He or she is the private or private plaintiff, civil plaintiff, the defendant or the third civil party.

2. He or she holds with any party to the relations referred to in Article 219, paragraphs 1 to 8, of the Organic Act of the Judiciary which determine the duty of abstention of judges and magistrates.

3. Those who have the kinship or relationship referred to in paragraphs 1, 2, 3, 4, 7, 8, and 11 of Article 219 of the Organic Act of the Judiciary with the Presiding-Judge of the Court, a member of the Public Prosecution Service or Judicial Secretary intervening in the case or with the attorneys or attorneys-in-fact.

4. Those who have taken part in the case as a witness, expert, guarantor or interpreter.

5. Those who have an indirect or direct interest in the cause.

Article 12. *Excuse to avoid acting as a Jury.*

It will be possible to be excused not to act as a Jury for:

1. Those people who are over sixty-five years old and those people with disabilities.

2. Those who have effectively served as jurors within the four years preceding the day of the new designation

3. Those who suffer serious disorder because of family burdens.

4. Those who perform a job of relevant general interest, whose substitution would cause significant damages to it.

5. Those who reside abroad.

6. The professional military officials working when attending reasons of service.

7. Those who claim and sufficiently prove any other cause that seriously hinders the performance of the jury.

Section 3. Designation of the Jury Members.

Article 13. *Lists of Jury nominees.*

1. The Provincial Government Offices of the Electoral Census Office will make a drawing for each province, within the last fifteen days of September of the even years, in order to establish the biennial list of jurors.

For this purpose, the Presidents of the Provincial Hearings will determine and communicate to the Delegate of that Office the number of nominees to jurors that they consider necessary to obtain by lot within the province at least three days before the scheduled date for the draw. The mentioned number shall be calculated by multiplying

by 50 the number of cases foreseen to be heard by the Jury Court, in an estimate made on the basis of those judged in previous years in the respective province, plus its possible increase.

2. The jury nominees to be obtained by drawing lots will be drawn from the list of the electoral census in force on the date of the draw, ordered by municipalities, related, within these, alphabetically and numbered correlatively within the whole of the province. This list will be forwarded for its anticipated exhibition for seven days to the respective City Councils.

The drawing will take place in the form determined by regulation and it will be held in a public session previously announced in a place authorized in the way established by the relevant Provincial Court.

3. Any citizen may file a complaint with the Provincial Court against the drawing ceremony within seven days after the draw.

The Hearing, formed by the President and the oldest Magistrate and the most modern Judge of those assigned to the Tribunal, acting as Secretary of the Tribunal or, if applicable as the First Section one, shall proceed to seek a report from the Provincial Delegate of the Electoral Census Office and to carry out the procedures that it deems relevant.

Before October 15, it will be resolved by reasoned resolution not subject to appeal, communicating the decision to the Provincial Delegation of the Office of the Electoral Census so that, if it is resolved, the draw is reiterated.

4. The Provincial Delegation of the Electoral Census Office will send the list of nominees to be members of the Jury to the respective Provincial Audience. The latter who will send it to the City Councils and the Official Gazette of the corresponding province, for their respective exhibition or publication, respectively, during the fifteenth of October. Likewise, within this period, the Secretary of the Provincial Court will proceed to notify each jury candidate of their inclusion in the said list, by means of a letter sent by mail, at the same time as the relevant documentation will be delivered to them. The causes of incapacity, incompatibility and excuse, and the procedure for their allegation shall be indicated.

Article 14. *Complaints against listing.*

1. During the first fifteen days of November, if the nominees to become members of the Jury consider that there is a lack of requirements established in Article 8, or a cause of incapacity, incompatibility or excuse, may make a complaint to the Dean Court of the of First Instance and Instruction of the judicial party to which the Municipality of its neighbourhood corresponds for the purpose of its exclusion from the list.

Such a claim may also be made by any citizen who understands that any of the Jury nominees lacks the requirements, capacity or incurs the causes of incompatibility referred to in Articles 8, 9, and 10 of this Act.

2. At the end of the period of exhibition, the Secretaries of the City Councils shall forward to the Judge Dean of the judiciary party a list of people. These people on the

list of Jury nominees could, on that date, be subject to the lack of requirements or cause of incapacity or incompatibility referred to in Articles 8, 9, and 10 of this Act.

Article 15. *Settlement of claims.*

The Judge Dean will transfer the claim or warning, if any, to the non-claimant, for three days. The Judge Dean will conduct the informative measures suggested to him and those which he deems essential. The Judge will issue a reasoned resolution on each of the claims or warnings made before the 30th of November.

If any of them was estimated, the Judge will have to make the relevant corrections or exclusions, communicating its resolution to the Provincial Delegation of the Electoral Census Office and notifying the interested party. There is no appeal against such a decision.

Article 16. *Communication and rectification of final lists.*

1. Once the definitive list for each province has been completed, the Provincial Delegation of the Electoral Census Office will send it to the President of the respective Provincial Court, who will send a copy to the President of the relevant High Court and to the President of the Criminal Chamber of the Supreme Court. The Provincial Delegation will also send a copy to the municipalities of the respective province for its exhibition during the two years of validity of the list.

2. Those included in the list of nominees to become Jury members may be summoned to form part of the Jury Court for two years from the following January. For that purpose, they will have the obligation to notify the Provincial Court of any change of address or circumstance that affects the requirements in their capacity or which determines an incompatibility to intervene as a jury.

3. Likewise, any citizen may communicate to the Provincial Court the causes of incapacity or incompatibility in which the Jury candidate may incur during the mentioned period. The Mayor of the respective City Council must communicate this incidence too, if there is a record.

4. The Provincial Court, with the composition provided for in paragraph 3 of Article 13, shall carry out the informative steps it deems appropriate and, after hearing, as the case may be, the non-claimant, shall reasonably resolve, without its resolution being appealed, notifying the interested party and, if appropriate, making the opt-out on the jury list.

Article 17. *Highlights of causes and sessions.*

The Provincial Courts and, where applicable, the Civil and Criminal Division of the Superior Courts of Justice and the Second Chamber of the Supreme Court shall make a display of the causes indicated for oral proceedings, in which jurors are to take part, prior to the 40th day before the relevant session.

For that purpose, the sessions will be: 1) from January 1 to March 20; 2) from March 21 to June 10; 3) from 11 June to 30 September, and 4) from 1 October to 31 December.

Article 18. *Designation of jurors for each case.*

At least 30 days before the date of the first oral hearing, having summoned the parties, the Judge, who shall preside over the Jury Court according to the rules of division, shall order that the Registrar draw the sweepstakes in public audience from among the Jury nominees of the list of the relevant province, of 36 Jury nominees for each cause indicated in the following session. The draw will not be suspended due to the absence of any of these representations.

Article 19. *Summons of Jury nominees appointed for a cause.*

1. The Court Clerk shall order what is necessary for the notification to the Jury nominees related to their appointment and for the summons so that they appear on the day appointed for the hearing of the trial at the place where it is to be celebrated.

2. The summons document will contain a questionnaire, which will specify the possible lack of requirements, causes of incapacity, incompatibility or prohibition that the candidates to appointed jurors are required to state as well as the cases of excuse that may be alleged by them.

3. The document shall be accompanied by the required information for those appointed about the constitutional function they are called to fulfil, the rights and duties inherent to it and the relevant remuneration.

Article 20. *Questionnaire return.*

The nominees for designated jurors shall return it to the Magistrate who will preside over the Jury Court within five days from the receipt of the questionnaire, by mail with official postage, duly completed and accompanied by the documentary justifications they deem appropriate, stating those personal circumstances associated with situations of disability they might have and which might be relevant for the regular exercise of this function. They shall also include the documentary justifications they deem appropriate and shall specify the request for the means of support and reasonable adjustments they require to perform their function.

Article 21. *Recusal.*

The Public Prosecution Service and the other parties, who have previously had to submit the completed questionnaire by the Jury nominees, may file an objection, within five days after delivery, due to a lack of requirements or any of the causes of incapacity, incompatibility or prohibition set force in this Act. They shall also add the proof that they try to use.

Any cause of recusal known at that time can not be later claimed if it is not formulated.

Article 22. *Decision regarding excuses, warnings and challenges.*

The Presiding-Judge shall indicate the day for the hearing of the excuse, warning or challenge presented, summoning the parties and those who have expressed warning or excuse. After the suggested measures have been executed in the act, the Presiding-Judge shall decide within the following three days.

Article 23. *New draw to complete list of jury nominees appointed for a cause.*

1. If, as a consequence of the previous resolution, the list of Jury nominees appointed for a cause is reduced to less than twenty, the Presiding-Judge shall order that the Clerk proceed to the immediate draw. This one shall be made in the same way as the initial and for the necessary jurors to complete that number, among those ones of the biennial list of the relevant province, after summons of the parties, quoting those appointed for the day of the trial.

2. The appointed Jury nominees shall also be subject to the provisions of Articles 19 to 22 of this Act.

CHAPTER III

Related to the procedure Jury Court cases.

Section 1. Initiation and Supplementary Investigation

Article 24. *Initiation of the procedure before the Jury Court.*

1. The Investigating-Magistrate shall proceed to issue a decision to initiate proceedings for the trial before the Jury Court, whose processing shall conform to the provisions of this Act, practising, in any case, those actions that can not be appealed to when the terms of the complaint or the detailed relationship of the fact in the complaint, and as soon as any procedural action, a person or persons determined to impute an offence, whose prosecution is attributed to the Jury Court, after assessing their authenticity.

2. The application of the Criminal Procedure Code will be supplemented as long as it is not opposed to the precepts of this Act.

Article 25. *Transfer of the imputation.*

1. The Investigating-Judge shall immediately inform the accused if the if the procedure for an offence whose prosecution is attributed to the Jury Court is initiated. In order to specify the imputation, he shall summon them within five days to a hearing, as well as to the Public Prosecution Service and other parties. At the time of the summons, he will transfer to the defendants the complaint or complaint admitted to the proceeding, if it had not been made previously. The defendant shall necessarily be assisted by counsel of his choice or, if not appointed, a court-appointed lawyer.

2. If those offended or those harmed by the crime are not known, they will be summoned to be heard in the appearance provided in the previous section and, at the time of the summons, will be instructed by means of a written notice of the rights they make reference to Articles 109 and 110 of the Criminal Procedure Code, if such diligence was not carried out previously. In particular, they will be given the right to formulate allegations and request what they deem appropriate if they are in legal form in the mentioned act and to request the right to free legal assistance under the conditions established in Article 119 of that Act.

3. In the mentioned appearance, the Investigating-Judge will start by hearing the Public Prosecution Service and, successively, the accusers, who will specify the imputation. He will then hear the counsel of the defendant, who will state what he deems appropriate in his defence and may call for dismissal, if there is cause for it, in accordance with the provisions of Articles 637 or 641 of the Criminal Procedure Code.

In their interventions, the parties may request the investigative measures they deem appropriate.

Article 26. *Decision on the continuation of proceedings.*

1. After hearing the parties, the Investigating-Judge shall decide on the continuation of the procedure, or dismissal, if there is reason for it, in accordance with the provisions of Articles 637 or 641 of the Criminal Procedure Code.

2. If the Public Prosecution Service and other parties request a dismissal, the Judge may adopt the resolutions referred to in Articles 642 and 644 of the Criminal Procedure Code.

The order for which the dismissal is agreed shall be appealed to the Provincial Court.

Article 27. *Investigation Procedure.*

1. If the Investigating-Judge agrees to the continuation of the procedure, he will decide on the relevance of the proceedings requested by the parties, ordering to practice or practising itself only those that he considers essential to decide on the provenance of the opening of the oral trial and it can not be practised directly at the preliminary hearing provided in this Act.

2. The parties may also request new proceedings within five days following the date of the appearance or following the one in which the last ordinances was practised. This circumstance will be notified to the parties so that they may request what they agree according to their rights.

3. In addition, the Judge may order, as a complement to those requested by the parties, the measures he deems necessary, limited to the verification of the objectionable fact and regarding the persons subject to attribution by the prosecuting parties.

4. If the Judge considers that the requests are inadmissible and he does not order any ex officio, he will grant a new transfer to the parties so that they may request, within a period of five days, what they deem appropriate regarding the opening of the oral trial, by writing the provisional conclusions. The Judge will order the same when he deems unnecessary more hearings even if he has not finished the hearings of those already ordered.

Article 28. *Indications of different offences.*

If the proceedings carried out result in rational indications of a crime other than that which is the subject of proceedings or if the mentioned proceedings resulted in the participation of persons other than those initially charged, the act established in Article 25 of this Act will be acted upon or, as the case may be, the procedure that corresponds if the crime was not attributed to the Jury Court.

Article 29. *Written application for oral trial and qualification.*

1. The written notice requesting the opening of the oral trial will have the content referred to in Article 650 of the Criminal Procedure Code.

2. The mentioned writing will be transferred to the representation of the accused, who will formulate written in the terms of Article 652 of the Criminal Procedure Code. 3. In both cases, the alternatives provided in Article 653 of the Criminal Procedure Code may be used.

4. The parties may suggest supplementary measures for their hearing at the preliminary hearing in their respective briefs and it may not be possible to repeat those that have been already heard.

5. When the parties understand that all the criminal acts that are the object of accusation are not those that have attributed their prosecution to the Jury Court, they will urge in their respective writs of request for oral trial the relevant appropriateness of the procedure.

If they consider that the lack of jurisdiction takes place only regarding any of the crimes that are the subject of the indictment, the request shall be limited to the relevant deduction of sufficient testimony, in relation to that which should be excluded from the procedure followed before the Jury Court, and the referral to the competent Court for the follow-up of the relevant case.

Section 2. Preliminary Hearing

Article 30. *Call for the preliminary hearing.*

1. After the defence rating has been presented, the Judge will indicate the closest possible day for a preliminary hearing of the parties on the origin of the opening of the oral trial, unless they are pending the investigation requested by the defence of the accused and declared relevant by the Judge. Once these have been heard, the Judge will proceed to make the mentioned pointing. At the same time, it will rule on the admission and hearing of the proceedings by the parties for the act of the mentioned preliminary hearing.

If the judge does not agree to call the preliminary hearing, the parties may appeal to the Provincial Court

2. The preliminary hearing may be waived for the defence of the accused, being calmed by the opening of the oral trial, in which case, the Judge will decree this, without further, in the terms of Article 33 of this Act. In order for the mentioned resignation to take effect, it must be requested by the defence of all the accused.

Article 31. *Preliminary hearing.*

1. The preliminary hearing will be held at the appointed day and time, beginning with the hearing of the measures suggested by the parties.

2. The parties may suggest measures to be taken on the act in that moment. The Judge shall refuse any suggested diligence that is not essential for the proper decision on the provenance of the opening of the oral trial.

3. Once the procedure has been completed, the parties will be heard as to the origin of the opening of the oral trial and, if applicable, the jurisdiction of the Jury Court for the

prosecution. The accusations may change the terms of its request to open the oral trial, without the admissibility of new elements that alter the accusation or accused person.

Article 32. *Notice of dismissal or opening of oral proceedings.*

1. After the preliminary hearing, in the same act or within the next three days, the Judge shall issue a judicial decree deciding whether or not to open the trial. If he decides not to open the trial, he shall agree to dismiss it. He may also order the opening of the oral trial and partial dismissal under the terms of Article 640 of the Criminal Procedure Code if any of the accused meets the provisions of Article 637.3 of the Criminal Procedure Code.

2. The order for which the dismissal is agreed shall be appealed to the Provincial Court. The order that agrees the opening of the oral proceedings is not appealable, without prejudice to the provisions of Article 36 of this Act.

3. The Judge may also order the hearing of some additional diligences before resolving, if he considers it essential as a result of the action at the preliminary hearing.

4. Where appropriate, the Judge may order the accommodation to the corresponding procedure when it is not applicable to the one regulated in this Act. If it is deemed that the corresponding one is regulated in Title II of Book IV of the Criminal Procedure Code, it will agree to open the oral trial, if deemed appropriate, and will refer the case to the Provincial Court or the competent Criminal Judge to continue the knowledge of the case under the terms of Articles 785 and following ones of the mentioned Act.

Article 33. *Contents of the opening of the oral trial.*

The writ that decrees the opening of the oral trial shall determine:

a) The fact or facts justifiable among those who have been the object of accusation and in respect of which the prosecution has been considered as appropriate.

b) The person or persons who may be judged as defendants or third parties civilly responsible.

c) The basis of the provenance of the opening of the trial with indication of the applicable legal provisions.

d) The responsible entity for prosecution.

Article 34. *Testimonies.*

1. In the same resolution, the Judge will agree to the testimony of:

a) The letters of qualification of the parties.

b) Documentation of proceedings that are not reproducible and that must be ratified in the oral proceedings.

c) The writ of opening of the oral trial.

2. The testimony, effects and instruments of the crime and other pieces of conviction, will be immediately forwarded to the Court competent for the prosecution.

3. The parties may request, at any time, the testimony on their interest for their subsequent use in the oral trial.

Article 35. *Location of the parties and designation of the Presiding-Judge.*

1. The Judge shall order the parties to appear within a period of fifteen days before the competent Court for the prosecution.

2. Once the proceedings have been received at the Provincial Court, the Magistrate will be appointed, corresponding in turn.

Section 3. Pre-Trial Issues before the Jury Court

Article 36. *Approach of previous issues.*

1. At the time of filing, the parties may:

a) To raise any of the issues or exceptions as set force in Article 666 of the Criminal Procedure Code or to plead what they deem appropriate on the competence or inadequacy of the procedure.

b) To allege the violation of some fundamental right.

c) To take an interest on the extension of the trial to some fact on which the Judge of Instruction would have denied the opening.

d) To request the exclusion of any event on which the oral trial was opened, if it is alleged that it was not included in the indictments.

e) To appeal the means of evidence suggested by the other parties and to suggest new means of proof.

In this case, it will be transferred to the other parties so that they can request in writing their inadmissibility within three days.

2. If any of these incidents is raised, the procedure established in Articles 668 to 677 of the Criminal Procedure Code will be provided,

Article 37. *Writ of justifiable facts, provenance of evidence and day of appointment for the hearing of the trial.*

If the parties involved are resolved and the proposed issues are resolved and if this does not impede the oral trial, the Judge presiding over the Jury Court shall issue a decision whose contents shall conform to the following rules:

a) The fact or justifiable facts shall be required in separate paragraphs. In each paragraph it will not be possible to include terms susceptible to be considered as proved or not proved. Any reference that is not absolutely essential for the qualification shall be excluded.

The facts alleged by the accusation as well as by the defence will be included in the mentioned reference. But if the affirmation of one of them implies the negation of the other one, only a proposition will be included.

b) Then, with the same criterion, the facts that shape the degree of execution of the crime and of the participation of the accused, as well as the possible estimation of the

exemption, aggravation or attenuation of criminal responsibility, will be presented in separate paragraphs.

c) Next, the crime or crimes that these facts constitute will be determined.

d) He shall also decide on the merits of the evidence proposed by the parties and the anticipation of their hearing.

No appeal shall be admitted against the resolution declaring the provenance of some evidence. If the practice of any means of proof is denied, the parties may formulate their opposition for purposes of further appeal.

e) It will also indicate day for the hearing of the trial by adopting the measures referred to in Articles 660 to 664 of the Criminal Procedure Code.

Section 4. Constitution of the Jury Court.

Article 38. *Concurrence of members of the Jury Court and disqualification of jury candidates.*

1. The day and time set for the trial shall be constituted by the Magistrate who shall preside over the Jury Court with the assistance of the Registrar and the presence of the parties. If at least twenty of the candidates for the jury are called, the Presiding-Judge will open the sitting. If the number of candidates is less than the mentioned one, the process shall be as follows:

2. The Presiding-Judge will question again the Jury in case there is a lack of requirements, some cause of incapacity, incompatibility, prohibition or excuse provided for in this Act. The parties may also question the jurors regarding the matters related in the previous paragraph by themselves or through the Presiding-Magistrate.

3. The parties may also reject those in whom they affirm a cause of incapacity, incompatibility or prohibition.

Disqualifications shall be heard and resolved by the Presiding-Magistrate in the real act, in the presence of the parties and hearing the affected jury candidate.

4. The Presiding-Magistrate will decide on the challenge, without being able to appeal, but does appeal against the effects of the appeal that may be filed against the sentence.

Article 39. *Completion of the minimum number of jury candidates and possible sanctions.*

1. If, as a result of the non-appearance of some of the Jury nominees, or as a result of the exclusions resulting from the provisions of the previous article, there are not at least twenty jurors, a new appointment will be made within the fifteen following days. The appearing parties and the absentees shall be summoned to that effect and not exceeding eight people, who shall be designated by a draw in the act among those on the biennial list. If the parties at that time alleged any cause of incapacity, incompatibility or prohibition of those so designated that was accepted by the Presiding-Magistrate

without protest of the other non-challenging parties, a new draw shall be completed until the figure of the eight complementary ones is obtained.

2. The Presiding-Magistrate shall impose a fine of 25,000 pesetas to the summoned Jury nominee who did not appear at the first summons or does not justify his absence. If it does not appear to the second summons, the fine will have a value from 100,000 to 250,000 pesetas.

At the time of the second summons, the Presiding-Magistrate will agree to be warned of the sanction that may correspond to them if they do not appear.

The economic situation of the jury that has not appeared will be taken into account when determining the amount of the second fine.

3. If, in the second summon, the minimum number of appearing Jury members is not obtained, the same procedure shall be followed in the same manner as in the first one, in successive calls and complementary draws, until obtaining the necessary concurrence.

4. In any case, the necessary measures will be taken regarding the means of proof proposed to make possible its practice once the Jury Court is formed.

Article 40. *Selection of the Jury and constitution of the Court.*

1. If a sufficient number of Jury members appears, a succession of draws will be carried out in order to select the Jury members who will be part of the Court, and two more as alternates.

2. Once the names of jurors have been entered in an urn, they will be extracted, one by one, by the Secretary who will read his name aloud.

3. After formulating to the nominee the questions that they deem appropriate and the Judging-President declares pertinent, the parties may challenge without allegation of a specific reason up to four of them by the accusations and another four by the defences.

If there were several prosecutor parties and accused parties, they must act by mutual agreement to indicate the Jury that they reject without allegations. If no agreement is reached, the order in which the accused or prosecutor parties may formulate the challenge shall be decided by lot until the quota of refusals is exhausted.

The civil plaintiff and third party civil liability can not make a challenge without a cause.

4. Then, the same procedure will be followed for the appointment of alternates. When there are only two remaining to be appointed deputies, no challenge will be admitted without a reason.

5. Once the draw has been completed, of which the Secretary shall draw up minutes, the Court shall be constituted.

Article 41. *Oath or pledge of nominees.*

1. Once the Court has been established, it will proceed to receive oath or promise from the appointed to act as Jury. While the Jury stands, Presiding-Magistrate shall say:

"Do they swear or promise to carry out the jury function impartially, without impartiality, without hatred or affection, examining the accusation, appreciating the evidence and deciding whether the accused are guilty or not guilty of the crimes under investigation ... how to keep secrets from deliberations? "

2. The jurors will approach, one by one, before the Presiding-Magistrate and, placed in front of him, they will say: 'I swear' or 'I promise', and they shall take their seats at the place intended for that purpose.

3. The Presiding-Magistrate will order the public hearing to begin when everyone has sworn or promised.

4. No one may exercise the functions of jury without taking the oath or promise indicated. Whoever refuses to take the oath or promise shall be ordered to pay a fine of 50,000 pesetas that the Presiding-Magistrate will impose on the act. If the called party persists in his refusal, the opportune amount of guilt will be deducted and a substitute will be called in his place.

Section 5. Oral Trial

Article 42. *Implementation of the Criminal Procedure Code.*

1. After the oath or promise, the oral hearing shall begin, following the provisions of Articles 680 and the following ones of the Criminal Procedure Code.

2. The defendant or defendants will be located so that their immediate communication with the defenders is possible.

Article 43. *Closed proceedings.*

For the decision to hold a closed meeting, the Presiding-Magistrate, after hearing the parties, shall decide what he deems appropriate, after consulting the Jury.

Article 44. *Defendant assistance and defence counsel.*

The hearing requires the assistance of the accused and the defence counsel. The latter will be available to the Jury Court until the verdict is issued, the oral trial before this Court being a priority against any other indictment or procedural action regardless of the jurisdictional order before which it takes place.

However, if there are several defendants and one of them fails to appear, the Presiding-Magistrate shall agree to continue the trial for the remainder after hearing the parties.

The unjustified absence of the third civil party duly named shall not be a cause for suspension of the trial, nor for its prosecution.

Article 45. *Previous arguments of the parties to the Jury.*

The hearing shall begin with the Registrar's reading of the qualifying briefs. The Presiding-Magistrate will then open a session of intervention by the parties to present to the Jury the arguments they deem appropriate in order to explain the content of their respective qualifications and the purpose of the test that they have proposed. On that

occasion they may suggest to the Presiding-Magistrate new evidence to be heard in the act, resolving it after hearing the other parties who wish to oppose their admission.

Article 46. *Evidentiary specialties.*

1. The jurors, through the Presiding-Magistrate and prior declaration of pertinence, may address, by means of a written notice, to witnesses, experts and accused parties the questions they deem necessary to determine and clarify the facts on which the evidence is to be found.

2. The Jury members will see by themselves the books, documents, papers and other pieces of conviction referred to in Article 726 of the Criminal Procedure Code.

3. For the eye inspection test, the Court shall be constituted in its entirety, with the jury, at the place of the event.

4. The proceedings referred by the Investigating Judge may be presented to the jury in the practice of the test.

5. The Public Prosecution Service, the counsel for the prosecution and the defence counsel may question the accused, witnesses and experts about the contradictions they consider to exist between what they state in the oral trial and what is said during the investigation stage. However, these prior statements can not be read, although the testimony that the interviewer must present at the meeting has been attached to the minutes.

The statements made during the investigation stage, except for those resulting from early evidence, will not have probative value of the facts stated therein.

Article 47. *Cancellation.*

When, pursuant to the Criminal Procedure Code, the hearing is to be cancelled, the Presiding-Magistrate may decide to dissolve the Jury, which shall, in any case, always agree that the cancellation shall be extended for five or more days.

Article 48. *Amendment of the provisional findings and final conclusions.*

1. Once the hearing of proof has been concluded, the parties may modify their provisional findings

2. The Presiding-Magistrate shall require the parties in the terms provided for in section 3 of Article 788 of the Criminal Procedure Code, where applicable, as provided in section 4 of the aforementioned provision.

3. Even if in its final conclusions the parties classify the facts as constituting a crime of those non attributed to the trial of the Jury Court, the Jury shall continue the process.

Article 49. *Early Jury dissolution.*

Once the accusation reports have been concluded, the defence may request the Presiding-Magistrate, or the latter, to decide ex officio, the Jury dissolution if it considers that there is no evidence of a charge that could establish a conviction of the accused.

If the absence of proof of charge only affects some facts or accused, the Presiding-Magistrate may decide that there is no place to issue a verdict in relation to them.

In such cases, a motivated acquittal shall be issued within the third day.

Article 50. *Jury Dissolution by agreement of the parties.*

1. Likewise, the Jury shall be dissolved if the parties are interested in having a sentence given in accordance with the writing of a request for a higher penalty, or with the one presented in the act, signed by all, without including other facts that the object or a more serious qualification than that included in the provisional findings. The sentence may not exceed six years of deprivation of liberty, alone or together with fines and deprivation of rights.

2. The Presiding-Magistrate shall issue the relevant sentence, taking into account the facts admitted by the parties, but, if he understands that there are sufficient grounds to believe that the justiciable fact has not been perpetrated or that it was not perpetrated by the accused, he will not dissolve the Jury and will order the trial.

3. In the same way, if the Presiding-Magistrate understands that the facts accepted by the parties may not constitute a crime, or that the concurrence of a cause of exemption or mandatory attenuation may result, the Jury will not dissolve, and, following a hearing of the parties, shall submit to the latter in writing the object of the verdict.

Article 51. *Jury dissolution of withdrawal in the request for sentence.*

When the Public Prosecution Service and other accusatory parties state in their final conclusions or at any previous moment of the trial, that they waive the request for the conviction of the accused, the Presiding-Magistrate shall dissolve the Jury and render an acquittal.

CHAPTER IV

Related to the verdict

Section 1. Purpose of the Verdict Object

Article 52. *Purpose of the verdict.*

1. Once the oral hearing has ended, after the reports have been produced and the accused have been heard, the Presiding-Magistrate shall proceed to submit to the Jury in writing the object of the verdict according to the following rules:

a) He will narrate in separated and numbered paragraphs the facts alleged by the parties and that the Jury must declare proven or not, differentiating between those that were contrary to the defendant and those that are favourable. He may not include in the same paragraph favourable and unfavourable facts of which some are likely to be considered tested and others are not.

He will begin by exposing those that constitute the main fact of the accusation and then recount those alleged by the defences. But if the simultaneous consideration of both ones as tested is not possible without contradiction, it will only include a proposition.

When the declaration of proven fact is inferred from the same statement of another, it must be proposed with due priority and separation.

b) Subsequently, according to the same criterion of separation and numbering of paragraphs, the Presiding-Magistrate shall then present the alleged facts that may determine the estimate of a cause of exemption from liability.

c) He will then include, in correlative, numbered and separated paragraphs the narration of the fact that determines the degree of execution, participation and modification of the responsibility.

d) Finally, he will specify the criminal fact by which the accused will have to be convicted or not guilty.

e) If several crimes are judged, the former will be drafted separately and successively for each offence.

f) He shall follow the same proceeding if there are several defendants.

g) The Presiding-Magistrate, in view of the result of the test, may add favourable legal facts or qualifications to the accused provided they do not imply a substantial variation of the justifiable event, nor cause defencelessness.

If the Presiding-Magistrate understands that from the evidence derives a fact that implies such a substantial variation, he will order deduction of the corresponding amount of guilt.

2. In addition, the Presiding-Magistrate shall, where appropriate, seek the jury's sentence on the application of the benefits of conditional referral of the sentence and the request or not for pardon in the sentence itself.

Article 53. *Parties hearing.*

1. Before giving the Jury the writ for the purpose of the verdict, the Presiding-Magistrate will hear the parties, who may request the inclusions or exclusions that they deem pertinent, deciding the one of the plan what corresponds.

2. The parties whose petitions were rejected may object to the appeal against the sentence.

3. The Clerk of the Jury shall incorporate the document with the object of the verdict to the record of the trial, giving a copy of it to the parties and to each of the jurors, and will record in the one the requests of the parties that are denied.

Article 54. *Jury instructions.*

1. Immediately, the Presiding-Magistrate shall proceed to deliver them to the jurors of the brief for the purpose of the verdict in public hearing, with the assistance of the Secretary, and in the presence of the parties. At the same time, he will instruct them on the content of the role conferred to them, the rules governing their deliberation and voting and how they should reflect their verdict.

2. He will also carefully explain to them, in a form that they can understand, the nature of the facts on which the discussion has been based, determining the constituent circumstances of the offence imputed to the accused and those referring to cases of exemption or modification of liability. All this shall be performed with reference to the facts gathered in the writing that is given to them.

3. The Presiding-Magistrate shall be careful not to make any reference to his opinion on the probative result, but rather on the necessity of not attending to those evidentiary means whose illegality or nullity has been declared by him. He shall also inform that if, after the deliberation, it was not possible to resolve the doubts they had on the evidence, they must decide in the most favourable sense to the accused.

Section 2. Deliberation and Veredict

Article 55. *Jury Deliberation.*

1. Then the Jury will retire to the room reserved for deliberation.

2. Initially presided over by the one whose name was the first to appear in the draw, they will proceed to elect the spokesperson

3. The deliberation shall be secret, without any of the jurors being able to reveal what has been expressed in it.

Article 56. *Jury solitary confinement.*

1. The deliberation shall take place behind closed doors, without being allowed to communicate with any person until the Jury has issued the verdict, adopting the appropriate measures to that effect by the Presiding-Magistrate.

2. If the deliberation lasts for so long that a break is necessary, the Presiding-Magistrate, ex officio or at the request of the Jury, will authorize it, keeping the solitary confinement.

Article 57. *Extension of instructions.*

1. If any of the jurors has any doubts about any of the aspects of the object of the verdict, he or she may request the presence of the Presiding-Magistrate to extend the instructions in writing notice and through the Clerk. The Presiding-Magistrate's appearance shall be done in a public hearing, assisted by the Clerk and in the presence of the Public Prosecution Service and other parties

2. After two days from the beginning of the deliberation without the jurors submitting the minutes of the voting, the Presiding-Magistrate may summon them to the appearance provided in the previous section. If none of the jurors expresses doubt on any of the aspects of the object of the verdict, the Presiding-Magistrate shall issue the instructions provided for in paragraph 1 of Article 64 of this Act with the effects attributed therein to the return of the minutes.

Article 58. *Roll-call vote.*

1. The roll-call vote shall be performed loudly and in alphabetical order, and the spokesperson is the last one to vote,

2. None of the jurors may abstain from voting. If anyone insists on abstaining, after being requested by the spokesman, it will be recorded in the minutes and, at the time, he or she will be sanctioned by the Presiding-Magistrate with fine of 75,000 pesetas. If, following the record and reiterating the request, the refusal to vote persists, a new record shall be recorded in the minutes from which the relevant testimony shall be deducted for exaction of the derived criminal liability.

3. In any case, abstention shall be understood as a vote in favour of not considering proven to be detrimental to the defence as well as in favour of not considering proven the guilt of the accused.

Article 59. *Voting on the facts.*

1. The spokesperson shall put to the vote each of the paragraphs describing the facts, as proposed by the Presiding-Magistrate. The jurors shall vote whether they consider proven or not such facts. To be declared as proved, seven votes are required, at least when they are contrary to the accused, and five votes, when they were favourable.

2. If such majority is not obtained, the relevant fact may be put to the vote with the details deemed relevant by the proposer of the alternative and, once again, the paragraph shall be written and put to a vote until obtaining the majority.

The amendment can not suppose to stop to put to vote the part of the fact proposed by the Presiding-Magistrate. However, a new or unpublished paragraph may be included,

provided that it does not entail a substantial alteration or an aggravation of the responsibility imputed by the accusation.

Article 60. *Voting on guilt or innocence, conditional remission of the sentence and request for pardon.*

1. If the necessary majority has been obtained in the vote on the facts, the guilt or innocence of each accused for each criminal offence imputed shall be put to the vote.

2. It will take seven votes to establish guilt and five votes to establish guilt.

3. The decision of the jury on the application to the convicted of the benefits of conditional remission of the sentence, as well as on the request for pardon in the sentence, shall require the favourable vote of five jurors.

Article 61. *Minutes of the vote.*

1. Once the voting has been completed, a record shall be drawn up with the following sections:

a) The first section, which starts as follows: «"The jurors have deliberated on the facts submitted to their resolution and have found proven, and so declare by unanimity or majority, the following ...».

If the vote was the text suggested by the Presiding-Magistrate, they may limit their role to indicate their number.

If the text voted included any changes, they shall write the text as voted.

b) The second section, which starts as follows: «They have also found unproven, and so declared by unanimity or majority, the facts described in the following numbers of the brief submitted to our decision». Then they will indicate the numbers of the paragraphs of the mentioned writing, being able to reproduce its text.

c) The third section, which starts as follows: «For all the above mentioned, jurors by (unanimity or majority) find the accused ... guilty / not guilty of the crime of...».

In this section they will make a separate pronouncement for each offence and for each accused party. In the same way, they will pronounce, as the case may be, on the Jury's criterion regarding the application to the person found guilty of the benefits of a conditional remission of the sentence imposed, in case the legal estimate to that effect concur, and on the petition or not of pardon in the sentence.

d) The fourth section, which starts as follows: «The jurors have served as elements of conviction to make the previous statements to the following: ...». This section will contain a succinct explanation of the reasons why they have declared or refused to declare certain facts as proven.

e) A fifth section where they will record the incidents that occurred during the deliberation, avoiding any identification that breaks its secrecy, except for the one regarding the refusal to vote.

2. The minutes shall be written by the spokesperson, unless he disagrees with the opinion of the majority, in which case the jurors will appoint the editor.

If requested by the spokesperson, the Presiding-Magistrate may authorize the Clerk or an officer to assist him, strictly in the preparation or in the deed of the minutes. In the same terms, it may be requested by the person who has been appointed as editor in substitution of that one.

3. The minutes shall be signed by all jurors, signing on behalf of the spokesman for in case he can not do it by himself. Should any of the jurors refuse to sign, this fact shall be recorded in the minutes.

Article 62. *Reading the verdict.*

Once the minutes have been extended, they will let the Presiding-Magistrate give him a copy. Unless the return proceed, in accordance with the provisions of the following article, he shall convene the parties by a means allowing their immediate reception so that the verdict is then read in a public hearing by the Jury's spokesperson.

Article 63. *Return of the minutes to the Jury.*

1. The Presiding-Magistrate shall return the minutes to the Jury if, in view of its copy, one of the following circumstances is appreciated:

a) That he has not ruled on all the facts.

b) That he has not ruled on the guilt or innocence of all the accused and in respect of all the criminal acts charged.

c) That the required majority has not been obtained in any of the votes on those points.

d) That the various statements are contradictory, either those relating to the facts declared proven between them, or the statement of guilt regarding the mentioned statement of proven facts.

e) That there has been a relevant defect in the deliberation and in the voting procedure.

2. If the act includes the declaration of proof of a fact which implies a substantial alteration of these or determines a responsibility more serious than the imputed and which has not been suggested by the Magistrate, it shall be considered.

3. Before returning the minutes, the process shall develop according to the form established in Article 53 of this Act.

Article 64. *Justification for the return of the minutes.*

1. At the time of returning the minutes, the Court, assisted by the Registrar and in the presence of the parties, shall explain the reasons justifying the return and shall specify the manner in which the procedural defects or the points on which new pronouncements must be issued shall be corrected.

2. The Clerk shall issue the relevant minutes of such incident.

Article 65. *Dissolution of the Jury and new oral trial.*

1. If, after a third return, the defects reported have not been remedied or the necessary majorities have not been obtained, the Jury shall be dissolved and an oral hearing shall be called be with a new Jury.

2. If after the conclusion of the new trial a verdict is not obtained by the second Jury, for any of the causes provided for in the previous section, the Presiding-Magistrate shall proceed to dissolve the Jury and render an acquittal.

Article 66. *Cessation of the Jury's role.*

1. After reading the verdict, the Jury will cease in its functions.

2. Until that moment, the deputies have remained at the disposal of the Jury in the place indicated to them.

CHAPTER V
Related to the sentence

Article 67. *Verdict of innocence.*

If the verdict were innocent, the Presiding-Magistrate shall immediately rule an acquittal of the accused party to which he refers, ordering, where appropriate, immediate release.

Article 68. *Verdict of guilt.*

When the verdict is guilty, the Presiding-Magistrate will give the floor to the Prosecutor and to other parties so that they report, by order, on the penalty or measures that must be imposed on each of those found guilty and on civil liability. The report will also refer to the concurrence of the legal estimates of the application of the benefits of conditional referral, if the Jury has issued a criterion favourable addressed to it.

Article 69. *Minutes of the meetings.*

1. The Clerk shall record minutes of each session, stating in a succinct manner the most relevant aspects that happened and in a literal way the protests that are made by the parties and the resolutions of the Presiding-Magistrate regarding the incidents that were raised.

2. The minutes shall be read at the end of each session, and shall be signed by the Presiding-Magistrate, juries and lawyers of the parties.

Article 70. *Content of the sentence*

1. The Presiding-Magistrate, shall rule a sentence in the manner ordered in Article 248.3 of the Organic Act of the Judiciary, including, as proven facts and offence subject to conviction or acquittal, the corresponding content of the verdict.

2. Likewise, if the verdict were guilty, the sentence will specify the existence of proof of charge required by the constitutional guarantee of presumption of innocence.

3. The sentence will be attached to the Jury's record and will be published and filed in legal form, extending in the cause certification thereof.

Additional provision one. *Deletion of the preliminary trial.*

Article 410 of Organic Act 6/1985, dated July 1, of the Judicial Branch, and Title II of Book IV of the Criminal Procedure Code are hereby repealed.

Additional provision two. *Criminal offences.*

1. Juries who leave their functions without legitimate cause, or fail to comply with the obligations imposed by Articles 41.4 and 58.2 of this Act, shall incur a fine of between 100,000 and 500,000 pesetas.

2. Juries who fail to comply with the obligations imposed in paragraph 3 of Article 55, shall incur the highest penalty of arrest and fine of 100,000 to 500,000 pesetas.

Additional provision third. *Support resources provision.*

The relevant Public Administrations shall provide with the necessary means of support ithe Court of Justice so that those persons who are disabled can exercise their right to be a Jury

Transitional provision one. *Criminal causes in process.*

Criminal proceedings initiated or brought about by events that occurred prior to the entry into force of this Act shall be processed before the competent Court in accordance with the rules in force at the time of those proceedings.

Transitional provision two. *Remedies regime.*

The system of remedies provided in this Act shall apply only to judicial decisions issued in proceedings initiated after its entry into force

Transitional provision three. *First list of Jury nominees.*

The first list of Jury nominees, which will extend its effectiveness until 31 December 1996, will be obtained by applying the provisions contained in Articles 13, 14, 15, and 16 of this Act, although the references made therein to September, October and November shall be understood to be made, respectively, for the three consecutive months following the entry into force of this transitional provision.

First final provision. *Amendment of the Organic Act of the Judiciary*

1. Article 73 (3) (c) of Organic Act 6/1985, dated July 1 of the Judiciary, the current content of which is changed to letter d) of the same section, is worded as follows:

> «c) The knowledge of appeals in cases provided for by law.»

2. Article 83 (2) of Organic Act 6/1985, dated July 1, of the Judiciary, is worded as follows:

> «2. The composition and competence of the Jury is regulated in the Organic Act of the Jury court.»

Second final provision. *Amendment of the Criminal Procedure Code.*

The articles and rubrics listed below of the Criminal Procedure Code are amended as follows:

1. A second paragraph is added to the third paragraph of Article 14 with the following wording:

«However, in the cases of jurisdiction of the Criminal Judge, if the offence is attributed to the Jury Court, the knowledge and judgement shall correspond to it.»

2. A second paragraph is added to the fourth paragraph of Article 14 with the following wording:

«However, in the cases of jurisdiction of the Provincial Court, if the offence is attributed to the Jury Court, the knowledge and judgement shall correspond to it.»

3. A third paragraph is added to Article 306 with the following wording:

«As soon as the procedure for the cases before the Jury Court is ordered, the Public Prosecution Service shall be informed of who will appear and intervene in any proceedings carried out before him.»

4. A new article is added to Article 309 bis with the following wording:

«**Article 309** *bis.*

The Investigating-Magistrate shall proceed to initiation of the procedure provided for in its regulatory law, in which, in the form established therein, the imputation will be immediately brought to the knowledge of those allegedly charged when the terms of the complaint or the detailed relationship of the fact in the complaint, as well as when any procedural action results against a person or persons determined to be charged with an offence, whose prosecution is attributed to the Jury Court.

The Public Prosecution Service, other parties, and the accused party in any case, may urge so and the Judge must resolve within a hearing. If he failed to do so, or if he dismissed the petition, the parties may appeal directly to a complaint to the Provincial Court, which shall decide before eight days, obtaining the report of the Instructor by the fastest means.»

5. A new Article is added to Article 504 bis 2 with the following wording:

«**Article 504** *bis 2.*

Once the detainee is placed at the disposal of the Investigating-Judge or Court that is to hear the case, the latter shall summon a hearing within the next seventy-two hours to the Public Prosecution Service, other parties and the accused, who shall be assisted of lawyer chosen by him or appointed ex officio. The Public Prosecution Service and the accused, assisted by his lawyer, will be required to attend.

At such a hearing they may suggest the means of proof that may be heard at the time or within the next twenty-four hours, without exceeding in any case the seventy-two hours indicated above.

Should any party be interested in the aforementioned hearing, having heard the allegations of all those who concur, the Judge shall decide on the origin or not of the provisional prison or release. If none of the parties requests so, the Judge shall necessarily agree to the cessation of the arrest and immediate release of the accused.

If for any reason the appearance can not be held, the Judge will agree to the prison or provisional release, if the estimate and risk of flight concur; but he shall summon it again within the next seventy-two hours, adopting the disciplinary measures that may have taken place in relation to the cause of non-celebration of the appearance.

A decision of appeal against the decisions of the Provincial Court shall be heard against the decisions rendered on whether or not the provisional release is to be granted.»

6. Article 516 remains with no content.

7. Article 539 is worded as follows:

«**Article 539.**

Provisions of imprisonment and freedom of attorney and of bail shall be revocable throughout the course of the case.

Consequently, the accused party may be imprisoned and released as often as is appropriate, and the bond may be modified in what is necessary to ensure the consequences of the trial.

A request from the Public Prosecution Service or from an accusatory party shall be requested in order to agree the imprisonment or provisional release of the person who is released; or to exacerbate the conditions of the provisional release already agreed upon, resolving prior to the appearance referred to in Article 504 bis 2.

However, the Judge or the Court consider that there is a risk of escape, he or she shall proceed to issue a writ of reform of the precautionary measure, or even imprisonment, if the accused party is released, but must summon, within seventy-two hours, to the mentioned appearance.

Provided that the Judge or Court understands that the release or modification of the provisional release on a more favourable terms than the one subject to the measure proceeds, it can at any time automatically agree to it and without being subject to the request of part.»

8. The third paragraph of Article 676 is worded as follows:

«The writ of appeal is against the self-determination of the declination and against which admits the exceptions 2.a, 3.a, and 4.a of Article 666. No appeal shall be lodged against the appeal dismissing them, except the one who proceeded against the judgement, without prejudice to the provisions of Article 678.»

9. A second paragraph is added to Article 678 with the following wording:

«The foregoing shall not apply to the jurisdiction of the Jury Court, without prejudice to what may be alleged in the appeal against the judgement.»

10. A new paragraph is added to Article 780 with the following wording:

«The provisions of Articles 309 bis or 789.3, second and third paragraphs of this article shall be complied with this Act once a process has been initiated in accordance with the provisions of this Act, as soon as it appears that the act could constitute an offence for which the Jury Court is responsible.»

The current third paragraph of that article becomes the fourth paragraph thereof.

11. The last paragraph is added to Article 781 with the following wording:

«As soon as the procedure for the cases before the Jury Court is ordered, the Public Prosecution Service shall be informed of who will appear and intervene in any proceedings carried out before him.»

12. New paragraphs are added to section 3 in Article 789 with the following wording:

The Investigating-Magistrate shall proceed to initiation of the procedure provided for in its regulatory law, in which, in the form established therein, the imputation will be immediately brought to the knowledge of those allegedly charged when the terms of the complaint or the detailed relationship of the fact in the complaint, ruled pursuant to the previous paragraph, as well as when any procedural action results against a person or persons determined to be charged with an offence, whose prosecution is attributed to the Jury Court.

The Public Prosecution Service, other parties, and the accused party in any case, may urge so and the Judge must resolve within a hearing. If he failed to do so, or if he dismissed the petition, the parties may appeal to a complaint to the Provincial Court, which shall decide before eight days, obtaining the report of the Instructor by the fastest means.»

13. Book V has the following denomination: «Related to Appeals, appeal of cassation and review».

14. A new Title I, entitled "Appeal against sentences and certain orders", is added to Book V and consists of the following articles:

«**Article 846** *bis a).*

The sentences handed down, within the area of the Provincial Court and in the first instance, by the Presiding-Magistrate of the Jury Court, shall be appealed before the Civil and Criminal Chamber of the Superior Court of Justice of the corresponding Autonomous Community.

The writs issued by the Presiding-Magistrate of the Jury Court shall also be appealable when they agree on the dismissal, whatever their class, and those issued by resolving issues referred to in Article 36 of the Organic Act of the Court of Jury as well as in the cases indicated in Article 676 of this Act.

The Civil and Criminal Chamber will be composed of three Judges in order to hear of this appeal.

Article 846 *bis b).*

The appeal may be lodged by the Public Prosecution Service, the sentenced person and the other parties, within ten days of the last notification of the sentence.

The party that has not appealed within the indicated term may file an appeal in the challenge proceedings, but this remedy shall be subject to the principal appellant maintaining his appeal.

Article 846 *bis c).*

The appeal must be based on one of the following reasons:

a) That in the proceeding or in the sentence the norms have been violated and procedural safeguards, that causes defencelessness, if the right claim of rectification has been made. This claim shall not be necessary if the alleged violation implies the violation of a fundamental constitutional guaranteed right.

For these purposes, it may be argued, without prejudice to others: those referred to in Articles 850 and 851, the references being understood to the magistrates of numbers 5 and 6 of the latter as also made to Jury; the existence of defects in the verdict, either by bias in the instructions given to the jury or defect in the proposal of the object of the latter, provided that this results in defencelessness, either because of reasons that should have led to its return to the Jury and it would not have been ordered.

b) That the sentence has incurred in breach of constitutional or legal precept in the legal characterization of the facts or when ruling the sentence, or when it has incurred in a breach of the measures of security or civil responsibility.

b) That the sentence has incurred in breach of constitutional or legal precept in the legal characterization of the facts or in the determination of the sentence, or of the measures of security or civil responsibility.

d) That the dissolution of the Jury should has been agreed and it such dissolution is not relevant.

e) That the right to the presumption of innocence had been violated because, given the evidence made at the trial, the sentence imposed is not reasonable.

The appropriate appeal must have been made at the time of the infraction denounced in the cases of letters a), c), and d), so that the appeal can be admitted.

Article 846 *bis d).*

A written appeal will be issued, after the term to appeal, to the other parties, which, within five days, may file an appeal subject to an appeal. It shall be transferred to the other parties if they brought such appeal.

At the end of the five-day term, no such request shall be made, or, if it was formulated, the transfer to the other parties shall be filed before the Civil and Criminal Chamber of the Superior Court of Justice to be filed within the term of ten days.

If the main appellant does not appear or state his resignation to the appeal, the case will be returned to the Provincial Court, declaring the sentence to be final and proceeding with its execution.

Article 846 *bis e).*

If the appellant appears, it will be indicated a day for the view of the resource citing the parties and, in any case, the condemned and third civil party.

The hearing shall be held in a public hearing, beginning with the use of the floor by the appellant party followed by the Public Prosecution Service, if not the one appealing, and other appealed parties.

If an appeal has been filed, this party shall intervene after the principal appellant, who, if he does not resign, may respond.

Article 846 *bis f).*

A sentence shall be given within five days after the hearing, which, if he or she considers the appeal for some of the reasons referred to in letters a) and d) of Article 846 bis 3, shall order the case to be returned to the Hearing for holding a new trial.

In other cases, the corresponding resolution shall be issued.»

15. The current Titles I and II of Book V become Titles II and III, respectively, of the same Book.

16. Article 847 is worded as follows:

«**Article 847.**

The cassation appeal for infraction of law and for violation of form against: a) the sentences dictated by the Civil and Criminal Division of the Superior Tribunals of Justice in single or in second instance; and b) the sentences handed down by the Provincial Hearings in oral proceedings and only instance.»

17. The first paragraph of Article 848 is worded as follows:

«The cassation appeal is only appropriate -and only for infringement of law- in cases where it expressly authorizes against the orders handed down, or on appeal by the Civil and Criminal Courts of the Higher Courts of Justice or in character by the Hearings.»

Third final provision. *Nature of the sentence*

This Act has an organic nature with the exception of Section III, the second transitional provision and paragraphs 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the second final provision that have the character of ordinary law.

Forth final provision. *Future procedural amendments.*

Within one year, following the approval of this Act, the Government will send to the Cortes Generales (Spanish Parliament), a bill to amend the Criminal Procedure Code, generalizing the procedural criteria established in this Act and establishing a procedure based on the accusatory principles and of contradiction between the parties, provided for in the Constitution, also simplifying the investigation process to avoid its excessive extension.

Likewise, the necessary legal reforms will be adopted adapting to this procedure the Statute and functions of the Public Prosecution Service within that period and the necessary material, technical and human means will be enabled by the Spanish Parliament and the Government.

Fifth final provision. *Entry into force.*

This Organic Act shall enter into force six months after its publication in the Official State Journal, except as provided in its Section II and its third transitory provision, which shall enter into force two months after the mentioned publication.Therefore,

I order all the Spaniards, private citizens and authorities to abide and enforce this Organic Act.

Madrid, May 22, 1995.

JUAN CARLOS R.

The President or the Spanish Government,

FELIPE GONZALEZ MARQUEZ


GOBIERNO
DE ESPAÑA
MINISTERIO
DE JUSTICIA