

# Ministerio de Justicia



ORGANIC ACT 5/1995, ON THE JURY

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"El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 del Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación."

# ORGANIC ACT 5/1995, ON THE JURY

Throughout the text, the term Trial judge has been changed to Trial Judge pursuant to Article 1.50 of the Organic Act 8/1995, of 16th November.

## PREAMBLE

### I

#### CONSTITUTIONAL FOUNDATION

Article 125 of the Spanish Constitution of 1978 states that “citizens may participate in the Administration of Justice through the institution of the Jury, in the form and with regard to the criminal procedures that the law shall determine”.

Our Constitution thus complies with what can be considered as an enduring element in the History of Spanish Constitutional Law, every period of freedom has led to the establishment of the Jury. This was the case in the Constitution of Cádiz of 1812, and in the Constitutions of 1837, 1869 and 1931. On the contrary, every period which has witnessed regression in the progress of civil liberties has eliminated or considerably restricted this instrument of public participation, in parallel and in addition to the restrictions to the aforesaid rights of citizens and to the instruments of participation in public matters.

This instrument, deeply rooted therefore in the liberal tradition, is being revived, based on the indisputable fact that since its first drafting in 1820 until its cessation in 1936, few legal institutions have endured - and therefore been enriched by- such an accentuated critical purging as the Jury. This process of critical analysis has allowed the extraction of the vast amount of individual data, experiences and precedents that have contributed to a comprehensive appraisal of the Institution.

Beyond any pro- or anti-legal conceptions, our Constitution indisputably links the instrument of the Jury with two fundamental rights, to wit: the direct participation of citizens in public matters, enshrined in Article 23.1 of the Spanish Constitution, and the right to a pre-determined ordinary judge, as determined by Article 24.2 thereof.

Indeed, in one sense, we are presented with the exercising of the individual right to participate in public matters, belonging to the sphere of “*status activae civitatis*”, the exercising thereof being attained not through representatives but through the direct participation of those citizens who personally constitute the Jury. For this reason, the representative character of the Institution must be discarded and the exclusively participatory and direct character thereof must be recognised.

It may therefore be stated that the Institution hereby regulated, differs from other models in the special way that it articulates the right and duty of citizens to directly participate in a true power of the State. We are faced with a right and a duty, which is reflected in the legal text by adopting coercive measures that assure compliance with this obligation, and consequently, the establishment of other measures aimed at mitigating, as far as possible, the excessively onerous nature of fulfilling this duty, through the retribution of the function and reparation of the costs incurred in the exercise thereof. The Act's conception of the democratic State is based on the participation of citizens in public affairs. There is no reason to exclude citizens from imparting justice; on the contrary, a procedure that satisfies this constitutional right in the fullest way possible must be established.

In the last instance, it is not a question of trusting or not the capacity of citizens, as if the negative alternative could be tolerable within a democratic system. It is rather a matter of overcoming whatever explicative factors that derive not from the disputable historic failure thereof but rather from the authoritarian and anti-democratic suspension of the institution.

The Jury is simultaneously a manifestation of Article 24 of the Constitution that enshrines the right recognised to all to a pre-determined Judge provided by Law and a complement thereof. It plays a necessary role in the due process but does so from an approach that differs from the one it had at the beginnings of the liberal bourgeois state; there are no longer reservations vis-à-vis professional judges and it is not a question of establishing a system of alternative justice in parallel and even less so in contradiction with the justice of professional judges referred to by Article 122 of the Constitution. It is rather a question of establishing procedural rules that both satisfy and are parallel to all of the requirements criminal procedures entail whilst implementing the right and duty of citizens to directly participate in the constitutional function of judging.

Article 125 of the Constitution essentially involves an unequivocal constitutional mandate that breaks through the lengthy parenthesis of the limited experiences and expectations of citizen participation in public matters. The Institution of the Jury reappears with a renewed series of

suggestions and nuances capable of projecting and making sense of contemporary social reality, now sufficiently corroborated, demanding urgent changes in the way justice is administered.

Consequently, the implementation of the Jury is not only a constitutional imperative but also an urgent necessity, being a decisive step in a far-reaching reform of the Administration of Justice, considered as a pressing need by many citizens.

This situation has also been recognised by the General Council of the Judiciary, in the memoranda issued in 1991 and 1992 and in the Detailed Report on the Needs of the Administration of Justice published in 1993, in the Section related to the legislative amendments deemed appropriate for the adequate exercise of the jurisdictional authority aimed at making trials more agile. The Section highlights “the implementation of the Jury, as set forth in Article 125 of the Spanish Constitution, shall require a substantial amendment to the institution through the incardination thereof in the procedural system, without this delaying criminal justice”.

From a technical and legal perspective, the approval of this Act shall represent one more qualitative step towards finalising the basic model of Justice designed by the Constitution and the Organic Act on the Judiciary, facilitating the participation of citizens in the Administration of Justice. The establishment of the Jury must be considered as a constitutional element still in need of implementation. The regulation of this Act fulfils a constitutional mandate that has been deferred on many occasions and establishes one of the essential parts involved in the functioning of the Administration of Justice designed by the Constituent Fathers.

## II

### CITIZEN JURORS

We have already forewarned that this Act is based on a perspective that views the Jury as a manifestation of the right to participate, which undoubtedly leads to the clarification of the essential issues belonging to the Jury’s purview, within which the function of participative citizens is recognised.

A basic precaution suggests that a gradual process in establishing the Institution is advisable, both selecting the number of matters to be attended and the nature thereof. The appropriate establishment of the Institution advises all parties intervening in this kind of trials to familiarise themselves with the peculiarities thereof, which are very different from the current way

in which trials are held. The specification of the trial's content, the allegations, the evidence to be considered, the language to be used and the content itself of the resolution must substantially vary.

The Act takes into serious consideration that trial by Jury constitutes the full expression of the basic procedural principles of immediacy; evidence based on free assessment thereof, exclusion of evidence unlawfully obtained, publicity and verbal hearing. For this reason, the offences selected are those lack excessive complexity in their legal definition or in which the integrating normative elements are particularly apt for their evaluation by citizens who are not professionals in the judicial field.

The scope of the Jury is detailed in Article 1. However, the future legislator shall undoubtedly evaluate, in the light of experience and the level of the institution's social consolidation, a progressive increase of the offences subject to trial by Jury.

The composition of the Jury requires a legislative response, the success of which not necessarily depending on its capacity to resolve the perennial issue on the separation between facts of the case and the law.

The authors of our former Jury Act, linking the historical origin of the Institution to the testimony of neighbouring ones, as a way of deciding the case, promoted intervention of the citizen Juror limited to the pronouncement as to whether the facts were proven.

Such an origin, as described above, is questionable. Furthermore, it is not always possible to decide the veracity of an historical affirmation, which is the typical presupposition of the offence, without considering the legal aspects. In spite of this, and this is what is important, the model currently being proposed by this Act achieves a degree of legitimising robustness never before attained. For this reason, within the Act, the Jury is not limited to deciding whether the evidence proves the deed or not, but shall evaluate other aspects such as the normative elements leading to exemption or not from criminal liability.

Within the Act, the option adopted on the process by which the Jurors are selected is consistent with the consideration of the fact that their participation constitutes a right and a duty. Citizenship, in the conditions which capacitates an individual for the full exercise of his civil rights and generates a presumption of capacity not requiring evidence of other exclusions or accreditations of capacity, except those that flagrantly prevent the exercise of the function of judging.

The convenience of participation being as acceptable to citizens as possible, leads to the recognition of a wide range of excuses subject to the precautions of the jurisdiction that must evaluate them.

The selection process is characterised by: a) the series of stages that guarantee the attendance of a sufficient number of candidates, in order to avoid suspensions in the holding of hearings and the advance knowledge of those who shall eventually be part of the Jury; b) the transparency and public nature of the selection process that does not only incorporate mechanisms to detect cases of exclusion but the jurisdictional guarantees, for both the candidate and, in a subsequent moment, the parties in the trial, c) candidates shall be drawn at random from the electoral register, which is not only democratic insofar as it excludes elitist criteria, even if based on objective criteria, but also consistent with the very grounds of participation.

It has been considered that, if an exclusion criterion (different from the one previously mentioned) were included in this Act, under the pretext of achieving higher capacity of that presumed deriving from inclusion in the electoral register, the very concept of “the people” would be distorted.

But this must not impede a certain degree of conciliation between the right to participate in the selection, with the right of all parties to procure a degree of pluralism in the jurisdictional body. In some measure, this right is related to the number of Jurors to be selected (nine), but even more so to the possibility of the parties peremptorily objecting to Jurors due to subjective evaluations of the criteria on which a candidate shall be base his decision. However, this possibility shall have to be subjected to strict restrictions in number in order to avoid the poor results that we have seen in the course of history.

### III

#### NECESSARY PROCEDURAL REFORMS AS GUARANTEES OF THE VIABILITY OF THE FUNCTIONING OF THE JURY

##### 1

#### **On the so-called interim phase**

Some have claimed that any kind of procedural particularity must begin at the same juncture as the intervention of the Jury, that is to say, at the trial. It has been argued that if the Jury is limited to intervening in the trial, the formal or mixed accusatory model of the Criminal Procedure Act must not be amended.

Such an opinion overlooks the following mandatory considerations:

a) The current system of judging by technical judges is based on normative premises that are difficult to transfer to a trial by Jury. If this system were to be maintained, it may result in the failure in the judging by non-professional citizens. The necessary amendments must inexorably be incorporated into the preliminary phase of the trial.

b) Our Constitutional Court has established a Case Law that is not only enriching, by correcting traditional imperfections within our Procedural Law, but also to ignore such a Case Law would be difficult to tolerate.

Alonso Martínez complained about the deeply rooted habit among our Judges and Courts, to give no or scant regard to the evidence provided at the hearing, and to instead insist on searching for the truth, mainly or even exclusively, in the prior investigation carried out behind the accused's back. The present Act conceives the trial by Jury as a way to eradicate the aforesaid procedural malformation, by means of the examination of all evidence before the said Jury.

The consequent risk of excessive prolongation of the trial hearing advises the introduction of simplification mechanisms. The most essential measure is the precise definition of what has to be tried, which shall be carried out in the phase preceding the hearing.

The resolution system for openings of oral trials that is currently in force is subject to two different procedural modalities: ordinary or abbreviated proceedings. In both, the system is limited to pronouncing a simple negative decision which is dysfunctional when it comes to the Jury to judge. For this reason, the model had to choose between the two aforesaid kinds of proceedings, making it very difficult to explain why after extending the interim phase or prosecution hearing to the trial, the procedural unity of the latter was not demanded also of the former.

On the other hand, the merely negative character of the decision to open the trial is not conducive to defining precisely the trial's object, the latter being an essential provision to assure the absence of confusion as to the facts to be proved. The aforesaid provision is also vital to avoid the delays inherent to the said lack of objective precision and to allow the appropriate and impartially prepared information to forego the undesirable "repeating" of the written record of the ordinary or the abbreviated proceedings.

Our Constitutional Court has also urged the promotion of a procedural debate in conditions, in the interim phase of proceedings, which respect the principles of contradiction and equal standing of the accuser and the defence.



Given the aforesaid precedents, the Act has considered the following to be relevant:

a) Choosing a precise and well-founded resolution on the opening of the trial. Of course, as some jurists have pointed out, jurisdictional monitoring of the trial's opening without the prior formalisation of the indictment may be difficult to put into practice. In this way, prior judicial monitoring on the reasonability of the indictment is not limited to forwarding. On the other hand, the scope of the decision making assigned to the jurisdictional body is increased, thus allowing the adoption of the decision of dismissal based on any of the motives.

b) Such monitoring not only results in the generic viability of the trial but it also specifies which concrete facts, taken from the many possible facts alleged by the prosecution and the defence, must constitute the object of the evidence production activity, which are the determining factors in the resolution of the trial.

It must be recalled that the content of this decision becomes one of the most important conditions for the success or failure of the Institution.

c) At the same time, the content and function of such resolution is related, as a mutual requirement, to the exclusion of the decree of indictment that would be requested by the necessary unity of the system concerning indictment.

## **2**

### **On the investigation phase**

The feature adopted by the Act on the system used to adopt the decision of sending to trial, is applied to the procedural phase that precedes it as follows:

a) By means of the guarantee of the impartiality of the court of law that is particularly reinforced. In this way, the efficiency and even the success of the investigation shall be evaluated, while simultaneously dealing with pretensions and opposing ideas, some formulated by the accused and others by the defence. Likewise, the likelihood of the truthfulness of statements and even of transcendence with regard to the legal definition shall be evaluated.

To ensure the necessary coherence, the model being adopted requires the possibility of an immediate imputation of a specific deed to be tried to a specific person and the repositioning of the Investigating Judge. The latter shall later have to resolve on the opening of the trial, in a reinforced position of impartiality, with the function of monitoring the indictment of the offence, by means of the prior evaluation of the verisimilitude thereof and the faculty to complementarily investigate the facts stated by both parties.

What must be avoided is that the strong tendency towards endless general investigations contributing to the failure of the viability of a trial by Jury.

On the other hand, the reproach that the Act leaves the mandatory principle of criminal action without an effective mechanism to force it is difficult to accept. Putting to one side the indiscriminate accusation of a positive attitude of inhibition by the Public Prosecutor, such a reproach fails to take into account that in order to initiate these proceedings, a complaint or criminal lawsuit must be filed by a person, if not the Public Prosecutor, who, given the fortunate constitutional provision for popular action, may cover the absence in the proceedings of the Public Prosecutor. This is the purpose of the summoning to popular action that the dissenting Judge can exercise, as set forth for the interim phase in our Criminal Procedure Act within the ordinary procedure.

When reproaching the capacity of the Investigating Judge in his determination of the facts and selection of the person to be investigated, it is forgotten that this reproach is also applicable to Criminal Procedure Act in force. In the latter, only what has been previously determined in the indictment shall be the object and passive subject in the trial. The Act continues to apply this principle, identical to that contained in the procedural legislation in force.

b) By means of judicial accusation prior to any indictment, given that the decision as to the opening of the trial calls for the formalisation of the aforesaid requirement.

The Constitutional Court has already denounced the fact that, for nearly a century, the procedural system allowed in Spain the Investigating Judge to inquire without stating what he was searching for or interrogate a suspect without informing him as to what he was suspected of or why preventing his self-defence and without providing him with legal counsel. The Constitution of 1978 and the reform to the Criminal Procedure Act through Act 53/1987, implement a crucial new slant. The Constitutional Court recognised the new category of being an accused person to any individual attributed a punishable deed, with or without foundation.

The lodging of a complaint or criminal lawsuit, or the existence of a procedural act in progress from which the deed to be tried is attributed to a specific person, must be the object of a detailed evaluation by the Judge in order to decide on the dismissal or not of a criminal case. Such a decision may not be arbitrarily delayed, and if this were to happen, pursuant to the aforesaid Case Law, the investigations carried out without such prior communication shall be deemed null and void, if appropriate.

The relation of the aforesaid Case Law which promotes a fair debate and that demands that the person who is to adjudge not to be the one making the indictment, has resulted in this Act laying down the instruction that, from the moment when the person and the deed to be tried are determined and this proceeding selected:

- a) A person different from the Judge is to formulate the accusation, precisely prior to initiating the investigation,
- b) The continuation of the investigation requires a jurisdictional body to assess, preceded by the opportunity for debate between the parties,
- c) The Judge to maintain a position different from that of the parties, during the investigation he considers reasonable to continue,
- d) This specific Judge, thus preserving a certain degree of impartiality, to monitor the opening or not of the trial, both positively and negatively, applying a high degree of precision to the object of the trial and the decision as to the necessary information to be sent to the Jury. The latter, however, without making available investigation materials which may limit the effectiveness of the oral nature, immediacy and speed required in a trial by Jury.

## IV

### TRIAL

#### 1

#### **Prior matters**

The need for the adequate preparation of the trial in order to prevent the failure thereof, has led the Act to step up the role assigned to the Judge in this preamble to the on-going trial.

The decision adopted by the Investigating Judge regarding the opening of the trial may certainly be the object of discrepancy between the parties. The treatment of any discrepancy concerning the appropriateness or otherwise of holding trial in this Act is similar to that contained in the Criminal Procedure Act: the right to appeal against dismissal and the impossibility of challenging the opening of the hearing, irrespective of the fact that, in principle, the parties when they formally acquire such status may lodge their prior incidents or exceptions, as detailed in Article 36 of the Act.

However, a discrepancy may arise in relation to particular aspects concerning the object of the trial and in this case the technique of an appeal is unnecessarily dilatory. This is due to the fact that the same objective may be achieved by treating the claim as a prior incident and hence lodging it as such with the Trial Judge.

This reviewing power is complemented in the Act by the power of directing the debate translated in the formulation and adjusted to the structure of the verdict.

The decision regarding the acceptance of evidence, subject to the pertinence thereof, is attributed in the Act to the Judge who shall have determined beforehand the object of the hearing and objective facts on which the evidence is to focus. The Judge shall also evaluate the impossibility of postponement that entails the advance rendering of the evidence and, in conclusion, decide on eventual allegations of evidence unlawfully obtained.

## **2**

### **Constitution of the Jury**

One of the most defining features of the Jury is that it is not a permanent jurisdictional body. This always required the indication of a period during which the body so constituted was to hear the case. In this way, the cases to be heard were determined according to two pieces of information: the time during which the Jury was formed and the original judicial district of the cases.

The first criterion has been replaced in this Act by the constitution of a Jury for each case, thus emphasising the temporary nature of the judicial body. Several reasons support this solution. Firstly, this solution shall mean that at least during the initial stages of the Institution's reinstatement, the burden of examining all of the cases to be heard in a given period shall not fall on a small number of Jurors: instead it shall be shared amongst additional citizens. Secondly, the proposal shall result in the wider rotation in exercising the function thus contributing to the achievement of one of the most beneficial features of the Institution: the experience of being a Juror acts as a citizenship academy accommodating the largest possible number of citizens.

Retaining a provision that establishes the periods in which the sessions shall take place is no longer necessary. However, this provision not only has symbolic significance, in that it acts as a reminder of the transitory nature of a citizen's Jury duty, but it also establishes a pattern to organise hearings. Accordingly, in a single act, the draw could be organised with enough time to decide a determined period. Concurrently, nothing shall

prevent, in establishing the Jury for a case that, in view of the nature and circumstances of such a case, it may be advisable to carry out a pre-constituent draw of the Jury on a date prudently chosen by the Trial Judge.

The second feature adopted by the Act is no less significant in relation to the background of the candidates selected for Jury duty. Domicile has historically been one of the most important factors involved in selecting Jury candidates. For this reason, Jurors must be, if not from the town or the judicial district in question, at least from the province in which the deed has taken place.

It is prudent to grant as much time as possible to allow prior communication of any causes that may cause problems with the number of Jurors able to attend the hearing on the selected day. The Act provides for this by including an absence of rigid preclusions and the advanced preparation of the list of Jurors to be called up, as well as a provision for a repeat draw before the selected day.

The Act foresees that the parties present at the start of the sessions may object to a Juror. The basis for accepting an objection, even without alleging a reason by the challenging party, is to ensure not only the impartiality of those called upon to adjudge but also for such impartiality to appear as real to those demanding justice. But such an ideal, which would require that the possibility of objecting to be unlimited must be reconciled with the requirement for the Institution's effective functioning not to be frustrated.

### **3**

#### **The debate**

Even when the Act barely limits itself to a reference to the common rules, it would be erroneous to overlook the fact that the direction of the trial itself is one of the keys to the success or failure of the Institution. If it were to fail, it could be equally attributable to the shortcomings of the technical Judge in the preparation of the hearing which the Act requires of him or to the non-professional citizen lacking the necessary aptitude to exercise the function assigned to him.

We may permit the brevity of the reference in this Section given that, as previously detailed, the Act has concerned itself with providing solutions to the most important aspects of the matter. On the one hand, the meticulous precision of the "thema probandi", the rigid and intelligible reference point that must inexorably guide everything that may occur during the trial. Such determination of the object of the trial, specifically articulated in the same

way as the evidence for examination required to reach the verdict, and expressed in terms accessible to the non-professional citizen, is presented in the Act as preferable to informing the Jury by means of notes or reports.

On the other hand, the exclusion of even the physical presence of the written record of the investigation in the trial, avoids an undesirable confusion of the cognitive sources worthy of consideration. In this way, it assists with directing the scope and purpose of the production of evidence to be carried out in the debate.

The oral nature, immediacy and public nature of the evidence presented to destroy the presumption of innocence, incorporated in the Act, presents us with one of the most controversial issues to date: the evidentiary value given to the written record of the investigation or measures taken prior to the hearing and to the prohibition of the written record thereof itself.

One factor that deserves special consideration is the participation of the Jury in the production of evidence. In the same way as the Criminal Procedure Act has opted for a compromise between the principle of contribution by the parties and that of *de officio* investigation, authorising the Judge to contribute to the production of evidence during the trial, this function is transferred to the Jury. The Jury itself shall now be responsible for the evidentiary evaluation of the indictment's veracity.

## **4**

### **The dismissal of the Jury**

The dismissal of the Jury is undoubtedly one of the most notable new features in relation to our historical experience. It would have been impossible for the constitutional declaration of the fundamental right to presumption of innocence not to have an influence on this Act. This influence can be largely attributed to the model from which this constitutional right arose.

As a precedent in Comparative Law, one may cite the provision in the federal rules of criminal procedure in the United States as the antecedent to the aforesaid right. This provision allows the dismissal of the Jury after examination of the evidence provided by both parties, if said evidence were insufficient to support the conviction for the offence or offences.

The scope and effects of this right, guaranteed by Article 24.2 of our Constitution are debatable and in fact are still debated. The Act is based on two premises: a) the distinction between of the content of the guarantee in terms of an objective factor concerning the existence of real evidence and the content of the guarantee in terms of a subjective one, referring to

the time of assessment of the evidence; and b) the distribution of duties between the Judge and Jury, calling on the former to monitor that objective dimension, considered a legal matter.

The Act deals with such monitoring by presenting considerations of unlawfulness or observance of the guarantees in the evidence gathering process, as well as the objective evaluation of the existence of incriminating evidence, as opposed to the adequacy thereof in justifying the sentence. The latter also appears as part of the fundamental right's content but in this case the Act assigns the task of evaluating the evidence to the Jury.

In effect, the criterion that separates the assessment of the existence of evidence from the adequacy thereof may be considered prevalent in the Case Law of the cultural sphere where the guarantee originates from: evidence shall not exist, if even using the interpretation most favourable to the argument of the indictment, if it would have to be rejected.

It is not inappropriate to limit the Judge's powers to such an evident aspect of the process for their exercise at the end of the debate. The existence of prima facie evidence justifying the opening of the trial shall have most certainly been evaluated by the Judge beforehand. This could lead to erroneously believing that a minimum evidentiary activity, lawful and conducive to prosecution, has been effected. Such an observation would fail to recognise that until the trial takes place, real evidence does not exist; the evaluation of the existence thereof assigned to the judging body and most importantly, that throughout the entire hearing, the unlawfulness or absolute absence of incriminatory force of the available evidence may become evident.

An historical viewpoint would advise us of the need for such a measure to account for one of the most generalised reproaches of the functioning of the Jury: the handing down of surprising verdicts. The Act yet again confers a large degree of trust to the Judge as a guarantee of the correct functioning of the Institution.

## V

### THE VERDICT

#### 1

#### **The object**

Alonso Martínez understood that extending competence on the offence to the "nomen iuris", manifested the confusion between fact and law. He even went as far to say that this represented the invasion of the Jury's purview into that of the legislator. The latter is not easily compatible, nor is

the easy conciliation of the schism between the historic and the normative aspects in the procedure easy. On the other hand, the reproach as to the absence of a stated motive, directed at the organised systems of the Jury that admit the presentation of a verdict only by citizens themselves, is longstanding.

The Act tries to provide a prudent response to the different objections that arise. On the one hand, this is because the deed is not considered conceivable from the reductionist, naturalist perspective, but precisely and exclusively as a legally relevant fact. A fact, in a concrete selection of the protean accidentality thereof, is stated as proved only insofar as it legally constitutes an offence.

Depriving the Jury from taking into consideration the inseparable link between the formation of the historic datum and the normative consequence thereof, is, on the one hand, of little use, due to the fact that the debate shall have warned of the consequence of the decision on the declared truth and shall not omit the reference to the consequences of supposedly only factual verdict thereof.

But, what is more, such a schism would lead us back to one of the most significant criticisms of our time to be directed at the Jury. The problematic articulation of the issues, excluding the proscribed aspects of legal technique, has provoked incessant debates as to the correction of verdicts and judgments.

It was also necessary to choose between the one response system or one of sequential articulation. The former framework lends itself to a conception that is distant from the validity and supremacy of the principle of legality. If the Jury can, on the basis of its irresponsibility, replace the generic and a priori criteria of the legislator with the conception of the concrete case, the apodictic verdict does not require articulation or motivation.

In our system the Jury must inexorably subject itself to the mandate of the legislator. Such subjection is only verifiable insofar as the verdict exteriorises the argumentative direction that supported it.

The Act addresses this as follows:

- a) By conferring on the Judge the duty of the rational articulation of the facts to be declared as proven in logical sequence;
- b) By insisting on the necessary unequivocal nature of the issue as a criterion;



c) By allowing the Jury a degree of flexibility so that, whilst replying to the issue submitted thereto, it may introduce conditions or complements to make the verdict comply with the conscience of the jurors in the examination of the facts. Furthermore, the rigidity of the response demanded of the Jury in the event of undesirable limitations preventing the open expression of its opinion, would be conducive to predictably surprising not guilty verdicts. In this way, a catalogue of questions prompting monosyllabic answers is avoided since such answers may not fully express the complete opinion of the Jury, as well as avoiding a system, already rejected by well-renowned jurists of conferring upon the Jury the responsibility of wording the proved facts;

d) By demanding from a Jury that has evidenced its capacity to decide between different versions of events, also the capacity to express the motives thereof. Most certainly, the declaration of what is deemed proven shall render the argumentation of the guilty or not guilty verdict more explicit. Presently, however, the constitutional requirement to express the reasons is unable to achieve the desired degree of explicitness. The reasoning behind the arguments presented is necessary and is most definitely achievable, since no special mechanism is required and the Jury has the possibility to call for the necessary assessment in any case;

e) By adding the need for a declaration of the assessment of the deed in the light of its legal definition. For such a declaration, the difficulty would not so much reside in the technical evaluation of the deed, but in the choice between the various versions thereof. Once again, the wisdom and expertise of the Judge shall guarantee the success of the model;

f) The shaping of the object of the verdict cannot dispense with the consideration of the object of the trial as connected with the allegations filed by all parties, with the interests of the defence and the accused, as well as with the right of these parties to participate in the final drafting by being appropriately heard.

## **2**

### **Instructions**

One of the keys to the success or failure of trial by Jury is contained in the instructions. Their justification is no other than that of making up for any deficiencies that may arise from technical ignorance of the law. This justification prevents the instructions from being applied to areas in which Jurors can and must act spontaneously.

It is therefore considered necessary to remove the summary of the evidence produced from the content of the instructions. This provision led to one of the biggest controversies in our historical experience.

However, the technical assessment cannot dispense with the warning of the non-admissibility of the evidence produced which suffers from legal defects rendering it null and void. Taking into account the way in which these instructions represent an integral part in determining the verdict, it would be pertinent to subject them to monitoring by the parties, so that the latter may be convinced of their impartiality, or if that is not the case, that the parties are given the opportunity to redress the error.

The needs for the Jury to be both spontaneous and adequately instructed are objectives that may come into conflict with one another, requiring their necessary reconciliation. Thus, even if the Jury must meet to deliberate free from interferences, the disposal of permanent access to the assessment that the Jury may freely demand is guaranteed.

It is worth taking into special consideration that the Act makes it possible for the Judge, even without the mediation of the Jury's request, to impart the instructions that help to avoid any unnecessary prolongation of the deliberation process. It is a question of preventing the inexperience of those involved in the deliberation process, as well as their reluctance to request instructions, from creating an unnecessary delay in the declaration of the verdict, which would affect the prestige of the Institution.

### **3**

#### **Deliberation and voting**

The secret nature of the deliberation process cannot be a limit to the responsibility of the jurors. Voting is therefore by name, which allows for the detection of abstentions, prohibited by the Act.

The rule requiring unanimity in order to produce the verdict is certainly considered the most apt to force a richer debate between Jurors. However, such a rule involves an extremely high risk of failing to reach the required unanimity. To achieve an adequately weighted interaction between indirectly aiming the deliberation process towards voting from the very start, by means of the possibility of arriving at simple majorities, and the avoidance of the excessive dismissals of juries, which may be caused by the simple, unjustifiable obstinacy of one or more of the jurors, a less demanding rule to reach a decision, at least at the initial stages of the establishment of the Institution, is advisable.

To assure the adequate functioning of the Institution, the Act rejects the possibility of remanding the verdict due to discrepancy in the meaning thereof, a provision has been included in the past. However, this must not prevent the detection of errors in the verdict - errors that would lead to the revocation thereof on appeal, if the verdict contradicts the Law - from being amended by intervention by the Judge, in the presence of the parties, highlighting the aforesaid errors and informing the Jury of the criteria to be applied for such a correction.

## VI

### SENTENCING

The submission of the Judge to the verdict is reflected in how the latter is received in the judgment and in the absolutive or condemnatory nature of the ruling. The Judge, who is also subjected to the legal wording of the verdict, shall conduct the evaluations necessary to determine the degree of execution, involvement of the accused and the applicability or otherwise of any circumstances that may modify accountability, and consequently the specification of the applicable penalty.

It must be pointed out that the Act's concern regarding the reasoning behind the ruling shall also require the Judge to provide justification for the evidence used to justify the verdict. The Judge shall do so, irrespective of the Jury's reasoning behind the evaluation of the existing evidence. The Act thus hopes to avoid any criticisms that may derive from the separation of the decision-making body, with regard to both the indivisibility of fact and law, and alleged irresponsibility due to the absence of reasoning behind the verdict and judgment, which are said to be inherent in a system such as this.

## VII

### LEGISLATIVE AMENDMENTS & PROCEDURAL PARTICULARITIES

#### 1

#### **Amendments of the Organic Act on the Judiciary**

The criteria contained in the Act materially reflect the principles of Article 83.2 of Organic Act 6/1985, of 1st July, which referred to a future Jury Act, so that having approved a complete regulation of this Institution it is therefore not deemed necessary. Given that the constitutional Case Law has demanded a unifying normative text for the implementation of Article 122.1 of the Constitution, the aforesaid precept of the Organic Act on the Judiciary has been amended insofar as the current Act affects the powers and functions of jurisdictional bodies. To this effect, the necessary reference to the Organic Act on the Jury has been included in Article 83.2.

## **2**

### **The Public Prosecutor in the instruction phase**

Even if the Judge's purview includes the investigation of offences, the particularities that must guide the proceedings before a Jury and the opportunity to consolidate the accusatory principle, imply that the Public Prosecutor's role is to be enhanced. In this way, the inception of proceedings and the adaption thereof to the new procedure; the participation of the Public Prosecutor together with the Investigating Judge, and the immediate notification of the accusation, as laid forth in Articles 24 and 25 of the Act, are also incorporated to Procedural Law by adding specific provisions to the Criminal Procedure Act, contained in Article 309 for the ordinary procedure and in Articles 780 and 789.3 for the abbreviated procedure.

Additionally, taking into account the reference in Article 36 to Articles 668 to 677 of the Criminal Procedure Act with regard to processing incidents as prior matters, for the sake of consistency, it is recommendable to add to Article 678 of the aforesaid Act, the exclusion of the possibility to repeat the discarded issues during the trial before the Jury. Coherent with this, the substitution of the appeal procedure against the decree resolving a plea of incompetence or of admission of the exceptions of Article 666 of the Criminal Procedure Act, by another appeal procedure, in line with the possibility of appealing judgments before the Provincial Court, is provided.

## **3**

### **Precautionary measures**

A new Article 504 bis 2 has been introduced into the Criminal Procedure Act, the adoption of precautionary measures on deprivation or restriction of liberty. It incorporates a mandatory hearing of the Public Prosecutor, the parties and the accused accompanied by the counsel for the defence thereof, and removes the need for the ratification of the detention order. In this way, the limitations of judicial power are compensated by the benefits it shall yield, without damaging the modifiable nature of the measures adopted throughout the course of the case.

## **4**

### **Appeals and Cassations**

The new Book V of the Criminal Procedure Act, entitled "Concerning Appeals, Cassations and Reviews" aims to extend appeals against decrees and judgments issued in trials by Jury, as well as specific, ordinary criminal resolutions provided for in Article 676 of the Procedural Act. This new appeal intends to fulfil the right to "double-contrast examination" or a "second hearing", as the system complies with the requirement which states that both the

conviction and the penalty imposed can be submitted to a higher court, bearing in mind the special nature of the procedure before a Jury and without impacting the very function that cassation must carry out for all offences.

To this effect, the Act adapts the grounds foreseen for contesting to the most special nature of this procedure and bestows decision-making powers to the Civil and Criminal Chamber of the Higher Courts of Justice, which apart from the necessary adjustments in personal means required, responds to a longstanding aspiration within the delimitation of the scope for hearing an appeal.<sup>1</sup>

## CHAPTER ONE

### GENERAL PROVISIONS

#### **Article 1. *Competence of the Jury***

**1.** The Jury, as an institution for the participation of citizens in the Administration of Justice, shall be competent to adjudge on those criminal offences submitted to the purview thereof for its assessment and to deliver a verdict thereon, pursuant to this Act or to any other, included under the following titles:

- a) Felonies against the person;
- b) Felonies committed by civil servants in the exercise of their posts;
- c) Felonies against honour;
- d) Felonies against freedom and security;
- e) Felonies of arson.

**2.** Within the scope of the judicial procedure to which the preceding Section refers, a Jury shall be competent to hear and hand down a verdict on the offences defined in the following provisions of the criminal code:

- a) On unlawful killing (Articles 138 to 140);
- b) On intimidation (Article 169.1);
- c) On failure in the duty to assist (Articles 195 and 196);
- d).On trespassing a dwelling (Articles 202 and 204);
- e).On forest fires (Articles 352 to 354);
- f).On disloyalty in the custody of documents (Articles 413 to 415);
- g).On corruption (Article 419 to 426);

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<sup>1</sup> Sections II, III, V and VII amended by Article 1.1 to 5 of Organic Act 8/1995, of 16th November

- h).On influence peddling (Articles 428 to 430);
- i).On embezzlement (Articles 432 to 434);
- j).On fraud and illegal taxation (Articles 436 to 438);
- k).On negotiations prohibited to civil servants (Articles 439 and 440);
- l) On disloyalty in the custody of prisoners (Article 471).

**3.** A trial by Jury shall only take place within a Provincial Court (Audiencia Provincial) and, in the event, within the Courts whose competence is determined by the personal status of the accused. In any event, offences to be tried by the National High Court (Audiencia Nacional) shall be excluded from the purview of the Jury.<sup>2</sup>

## **Article 2. *Composition of the Jury***

**1.** The Jury shall be formed of nine Jurors and one Trial Judge belonging to the Provincial Court (Audiencia Provincial).

If, due to the personal status of the accused, the Jury trial must take place in the Supreme Court or a High Court of Justice, the Trial Judge of 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.

**2.** Two alternate Jurors pursuant to Articles 6 and 7 shall also attend the Jury trial.<sup>3</sup>

## **Article 3. *Functions of Jurors***

**1.** Jurors shall reach a verdict declaring the facts, determined by the Trial Judge, as proven or not, as well as the other facts they may decide to include in their verdict that do not materially alter it.

**2.** Jurors shall also reach a verdict of “guilty” or “not guilty” for each of the accused involved in the criminal deed or deeds for which the Trial Judge has accepted the indictment.

**3.** In the exercise of their functions, Jurors shall act pursuant to the principles of independence, accountability and compliance with the law, to which Article 117 of the Constitution refers for members of the Judiciary.

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<sup>2</sup> Section 2 amended by Final Provision 2 of Organic Act 10/1995, of 23rd November.

<sup>3</sup> Sections amended by Article 1.6 and 7 of Organic Act 8/1995, of 16th November.

<sup>3</sup> Section 1 amended by Article 1.8 of Organic Act 8/1995, of 16th November

4. Jurors who consider themselves disturbed or interfered with in their independence in the exercise of their functions may address the Trial Judge, for the latter to assist them in the exercise of their post, pursuant to the provisions contained in Article 14 of the Organic Act on the Judiciary.<sup>4</sup>

#### **Article 4. *Functions of the Trial Judge***

In addition to the duties assigned by this Act, the Trial Judge shall pronounce the judgment, reflecting the verdict of the Jury, and shall impose the penalty and corresponding security measure, where appropriate.

The Trial Judge shall also decide on the civil liability of the accused or third parties against whom a claim has been made, where appropriate.

#### **Article 5. *Determining the competence of the Jury***

1. The competence of the Jury shall be determined by referring to the alleged criminal deed, whatever the degree of involvement or execution attributed to the accused. However, in the case Article 1.1.a) the Jury shall only be competent if the offence was consummated.

2. The competence of the Jury shall extend to the prosecution of related offences, provided that the connection between them is based on any of the following: a) that two or more persons jointly committed the different offences; b) that two or more persons committed more than one offence in different times or places, if they have conspired to do so; c) that any one of the offences has been committed in order to commit the other offences facilitating the execution of the offences or procuring impunity therefrom.

The aforesaid notwithstanding and without prejudice to Article 1 of this Act, in no event shall the offence of prevarication be prosecuted through connection, nor related offences which may be tried separately without interrupting the course of the case.

3. When one single deed constitutes two or more offences, the Jury shall be competent to adjudge if any of the aforesaid offences were to be submitted to the consideration thereof.

Likewise, when various actions and omissions constitute a continuing offence, the Jury shall be competent if the latter were to be submitted to the consideration thereof.

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<sup>4</sup> Section 4 amended by Article 1.10 of Organic Act 8/1995, of 16th November

4. The territorial competence of the Jury shall comply with the general rules.<sup>5</sup>

## CHAPTER TWO

### JURORS<sup>6</sup>

#### **Section 1. General Provisions<sup>7</sup>**

##### **Article 6. *The right to and duty of being a Juror***

Jury service is a right that may be exercised by those citizens for whom a cause impeding such exercise does not concur and the discharge thereof is a duty for neither those who are not disqualified due to incompatibility or prohibition nor those who may excuse themselves pursuant to this Act.<sup>8</sup>

##### **Article 7. *Remuneration for Jury service and employment and civil service considerations concerning the discharge of a Juror's duty***

1. The discharge of a Juror's duties shall be paid and reimbursed in the manner and with the amounts determined in the implementing regulations.

2. In relation to employment and civil service considerations, the discharge of the Juror's duty shall be deemed a compulsory duty of both a public and a personal nature.<sup>9</sup>

#### **Section 2. Qualifications, incapacity, ineligibility, disqualifications and excusals<sup>10</sup>**

##### **Article 8. *Requirements for Jury service***

To legally qualify as a Juror, an individual must:

1. Be a Spanish citizen of legal age;
2. Be in full possession of his political rights;
3. Know how to read and write;

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<sup>5</sup> Sections 1 and 2 amended by Articles 1.10 and .11 of Organic Act 8/1995, of 16th November

<sup>6</sup> This Chapter entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>7</sup> This Section entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>8</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>9</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>10</sup> This Section entered into force on 23rd July 1995, as set forth in Final Provision 5.



4. At the time of summoning, reside in the any of the municipalities of the province within with the offence was committed;
5. Have no disqualifying physical, psychological or sensorial condition preventing him from exercising his duties as a Juror.<sup>11</sup>

#### **Article 9. *Incapacity for Jury service***

The following individuals may not discharge Jury duty:

1. Persons convicted of an intentional criminal offence who have not been rehabilitated;
2. Persons indicted or accused in reference to whom the holding of a trial has been decreed or those in detention, remanded in custody or serving a sentence for a criminal offence;
3. Persons suspended from their public duty or office due to criminal proceedings.<sup>12</sup>

#### **Article 10. *Ineligibility for Jury service***

The following individuals shall not be ineligible for Jury service:

1. The King and the other members of the Spanish Royal Family and the spouses thereof, included on the Civil Register regulated by Royal Decree 2917/1981, of 27th November;
2. The President of the Government, Vice-Presidents, Ministers, Secretaries of State, Under-Secretaries, Director- Generals and holders of assimilated offices; the Director and Provincial Delegates of the Electoral Census Office, the Governor and Deputy- Governor of the Bank of Spain;
3. The Presidents of the Autonomous Communities, members of Governing Councils, Deputy-Counsellors, Director- Generals and similar holders of similar offices;
4. Deputies and Senators of Cortes, Members of European Parliament, Members of Legislative Assemblies of the Autonomous Communities and elected Members of Local Corporations;
5. The President and Judges of the Constitutional Court, the President and members of the General Council of the Judiciary and State Attorney General, the President and members of the Court of Auditors and the Council of State, and of any similar bodies or institutions of the Autonomous Communities;

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<sup>11</sup> Section 5 amended by Article 1.12 of Organic Act 8/1995, of 16th November

<sup>12</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

6. The Ombudsman and his deputies as well as those holding similar offices in the Autonomous Communities;
7. Members in active service of the Judiciary and the State Prosecution Service, Court Clerks, Forensic Doctors, Officials, Assistants, Officers and other staff involved in the Administration of Justice, as well as members in active service of the Judiciary Police, members in active service of the Legal Military Corps, and Assistants of the Military Jurisdiction and of the Military Prosecutor's Office;
8. Government Delegates in the Autonomous Communities, Autonomous Cities of Ceuta and Melilla and Government Delegates in the Islands and Prefects;
9. Legal Counsels actively serving in any constitutional bodies, or Public Administrations or any other Courts; solicitors and barristers in active service. University professors of legal disciplines or Forensic Medicine;
10. Members in active service of the Police and Security Forces;
11. Civil servants of the Prison Service;
12. Heads of Diplomatic Missions accredited abroad, Heads of Consular Posts, Heads of Permanent Representations to International Organisations.<sup>13</sup>

#### **Article 11. *Disqualification from Jury duty***

An individual shall be disqualified from Jury duty in Jury adjudging a case if:

1. He is the private prosecutor, civil party, accused or a third party liable under the Civil Law;
2. He has one of the relationships defined in Article 219, in Sections 1 to 8 of the Organic Act on the Judiciary that determine the duty of abstention of Judges and Magistrates;
3. He is in any way related to the Trial Judge, member of the Public Prosecution or Court Clerk, the Solicitors or Barristers intervening in the case pursuant to Sections 1, 2, 3, 4, 7, 8 and 11 of Article 219 of the Organic Act on the Judiciary;
4. He has intervened in the case as a witness, expert, guarantor or interpreter;
5. He has direct or indirect interest in the case.<sup>14</sup>

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<sup>13</sup> Sections 7, 8 and 9 amended by Article 1.13, .14 and .15 of Organic Act 8/1995, of 16th November

<sup>14</sup> Section 3 amended by Article 1.16 of Organic Act 8/1995, of 16th November

## **Article 12. *Excuse from Jury duty***

An individual may be excused from Jury duty if:

1. He is over seventy-five years of age;
2. He has effectively served on a Jury within a four- year period preceding the new summoning;
3. He would suffer severe distress in his family commitments;
4. He discharges a work of significant public interest which would be negatively affected if he were to be substituted;
5. He is an overseas resident;
6. He is a professional member of the Armed Forces if service reasons concur;
7. He alleges, providing sufficient evidence thereof, any other reason that seriously impairs him from discharging his duty as Juror.<sup>15</sup>

## **Section 3. Jury Selection<sup>16</sup>**

### **Article 13. *Electoral register as basis for Jury selection***

1. Provincial Delegations of the Electoral Census Office shall select candidates at random from each province, within the last fifteen days of the month of September of every year, in order to compose the biennial list of Jury candidates.

To this effect, the Presidents of the Provincial Courts, giving three days' notice prior to the date of the draw, shall determine and inform the Delegate of the Office in question of the required number of Jury candidates to carry out the draw. This number shall be calculated by multiplying the number of cases to be heard by Jury by 50, and by taking into account the estimation taken from prior years from the respective province, adding the possible increase thereof.

2. Jury candidates to be selected by draw shall be chosen from the electoral register in force at the date of the selection; the latter categorised by municipality and then organised in alphabetical and numerical order within the province. The aforesaid list shall be sent to the respective Municipal Councils for advance inspection for a period of seven days.

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<sup>15</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>16</sup> This Section entered into force on 23rd July 1995, as set forth in Final Provision 5.

The draw shall take place in a public session, previously announced by the Provincial Court in the appropriate venue and it shall be carried out pursuant to the conditions laid down in the implementing regulations.

**3.** Within a period of seven days following the selection, any citizen may file a claim against the draw, before the Provincial Court.

The Court, constituted by the President and both the longest and shortest serving Judge of the Court, acting as Clerk that of the Court or, if appropriate, the Clerk of the First Section, shall secure a report from the Provincial Delegate of the Electoral Census Office and shall proceed as deemed necessary.

Prior to the fifteenth day of October, the Court shall decide in a reasoned ruling not subject to appeal, informing the Provincial Delegation of the Electoral Census Office of the decision, in order to repeat the draw if so ordered.

**4.** The Provincial Delegation of the Electoral Census Office shall send the list of Jury candidates to the respective Provincial Court that shall forward it to Municipal Councils and the "Official Gazette" of the corresponding province, for the due exhibition and publication thereof, respectively, during the last fifteen days of the month of October. Additionally, during the same period, the Clerk of the Provincial Court shall notify each Jury candidate by post of his inclusion on the list, whilst delivering to each Jury candidate at the same time the relevant documentation indicating the cases of incapacity, ineligibility, disqualification or excuse and the procedure for alleging such cases.<sup>17</sup>

#### **Article 14. *Claims against inclusion on the list***

**1.** During the first fifteen days of the month of November, those Jury candidates who claim not to fulfil the requirements set forth in Article 8 or present any grounds for ineligibility, disqualification or excusal, may file a claim before the Chief Judge of the Court of First Instance and Preliminary Investigation corresponding to their Municipality of residence in order to be excluded from the list.

Any citizen who believes another candidate to be lacking the qualifications, or to be incapable or ineligible, as referred to in Articles 8, 9 and 10 of this Act, may also file such a claim.

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<sup>17</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

2. Once the exhibition period has ended, the Secretaries of the Municipal Councils shall send to the Chief Judge of the judicial party, a report on the persons included in the list of Jury candidates, who may be, on this date, subject to the lack of requirements or present cause for incapacity, as referred to in Articles 8, 9 and 10 of this Act.<sup>18</sup>

#### **Article 15. *Resolution of claims***

The Chief Judge shall convey the claim or notification, where appropriate, to the non-claimant, for a period of three days. He shall inform the relevant parties and carry out the investigation he may deem essential, and shall hand down a reasoned decision on each one of the claims or notifications filed before the thirtieth day of the same month of November.

If a claim were successful, he shall order the necessary amendments or exclusions and inform the Provincial Delegation of the Electoral Census Office and the party in question of his decision, which cannot be appealed.<sup>19</sup>

#### **Article 16. *Distribution and amendment of the Final lists***

1. Once the list for each Province is finalised, the Provincial Delegation of the Electoral Census Office shall send the list to the President of the respective Provincial Court. The latter shall then forward a copy to the President of the relevant High Court of Justice and to the President of the Criminal Chamber of the Supreme Court. Likewise, he shall send it to the Municipal Councils of the respective province for exhibition thereof during the two years following the compilation of the aforesaid list.

2. Jury candidates included on the list may be summoned to take part in the Jury at any time during the two years that follow the first day of January of the subsequent year. To this effect, they shall be obliged to inform the Provincial Court of any change in residence or circumstances that may affect the qualifications, eligibility or disqualification from Jury service.

3. Furthermore, during the aforesaid period, any citizen may notify the Provincial Court of any grounds for disqualification or ineligibility that may affect a Jury candidate. The Mayor of the respective Municipality shall also communicate this, if he were to become aware thereof.

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<sup>18</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>19</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

4. The Provincial Court, composed as foreseen in Section 3 Article 13 hereof, shall carry out the necessary informative measures, and where appropriate, after hearing the non-claimant but interested party, shall hand down a reasoned decision, not subject to appeal, notifying the person concerned, and where appropriate, removing him from the list of Jury candidates.<sup>20</sup>

#### **Article 17. *List of Cases and Periods of Session***

Prior to the fortieth day preceding the relevant period of sessions, the Provincial Courts, and where appropriate, the Criminal and Civil Chambers of the High Courts and the Second Chamber of the Supreme Court, shall display a list of the cases to be tried by Jury.

To this effect, the periods of session shall be as follows: 1) from the first day of January to the twentieth day of March, 2) from the twenty-first day of March to the tenth day of June, 3) from the eleventh day of June to the thirtieth day of September, and 4) from the first day of October to the thirty-first day of December.<sup>21</sup>

#### **Article 18. *Assignment of Jury candidates to each case***

At least thirty days before the date set for the trial's first meeting, the Trial Judge, pursuant to the distribution rules, having summoned the parties, shall ensure that the Court Clerk, in public, makes the draw of the Jury candidates included on the list for the corresponding province, thirty- six Jury candidates for each case that shall be heard in the following period of sessions. The random selection shall not be suspended as a result of the non-attendance of any of the aforesaid representatives.<sup>22</sup>

#### **Article 19. *Summoning of Jury candidates assigned to a case***

1. The Court Clerk shall provide as necessary to notify Jurors of their appointment and for their summoning to attend on the day set for the trial at the place where it is to be held.

2. The writ of summons sent shall contain a questionnaire, in which the qualifications, grounds for ineligibility, disqualification or prohibition shall be specified. Jury candidates shall be obliged to notify and provide evidence of any grounds to be excused that they allege.

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<sup>20</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>21</sup> This Article entered into force on 23rd July 1995, as set forth in Final Provision 5.

<sup>22</sup> This Article was amended by Article 1.17 of Organic Act 8/1995, of 16th November.

3. The writ of summons shall also include the necessary information in relation to constitutional role they are being summoned to discharge, the rights and duties inherent thereto and the corresponding remuneration.<sup>23</sup>

#### **Article 20. *Returning the questionnaire***

The Jury selected candidates shall return the questionnaire, correctly completed and accompanied by the necessary documental justifications, the postage being paid by the State, within the five days following the reception thereof to the Trial Judge.<sup>24</sup>

#### **Article 21. *Challenge***

The Public Prosecutor and other parties, who shall have already received the questionnaire completed by the Jury candidates, within five days of the reception thereof, may challenge on the basis of non-fulfilment of qualifications, ineligibility, disqualification or prohibition pursuant to this Act. They shall also provide the evidence backing the challenge.

Any grounds to challenge known but not formulated within the aforesaid period, shall not be subsequently admitted.<sup>25</sup>

#### **Article 22. *Resolution of excusals, notifications and claims***

The Trial Judge shall determine the date of the examination of the excusal, notification or claim submitted, summoning the parties and the person challenging or submitting the excuse. Once the proposed measures have been carried out immediately, he shall resolve the matter within the three following days.<sup>26</sup>

#### **Article 23. *Repetition of the draw to complete the list of Jury candidates assigned to a case***

1. If, as a result of the aforesaid resolution, the list of Jury candidates amounts to less than twenty, the Trial Judge shall order the Court Clerk to immediately repeat the draw, in the same way as the first, in order to obtain the said number, from the biennial list of the corresponding province, after summoning the parties and summoning those drawn to appear on the day of the trial.

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<sup>23</sup> Title, Sections 1 and 2 amended. Section 4 replaced by Article 1.18 and .19 of Organic Act 8/1995, of 16th November.

<sup>24</sup> Paragraph 1 amended by Article 1.20 of Organic Act 8/1995, of 16th November.

<sup>25</sup> Paragraph 1 amended by Article 1.21 of Organic Act 8/1995, of 16th November

<sup>26</sup> Article amended by Article 1.22 of Organic Act 8/1995, of 16th November

2. The Jury candidates selected shall be subject to the provisions of Articles 19 to 22 of this Act.<sup>27</sup>

### CHAPTER III

#### ON THE PROCEDURE FOR CASES TO BE TRIED BY JURY

#### **Section 1. Inception and additional instructions**

##### **Article 24. *Opening of the proceedings before a Jury***

1. When as a result of the terms of a criminal complaint or the detailed account of the points of fact of a criminal lawsuit or as a result of any procedural act an offence is imputed against a determined person or persons to be tried by Jury, after assessment of verisimilitude thereof, the Investigating Judge shall decree the opening of proceedings leading to trial by Jury and the processing thereof shall comply with the provisions of this Act, carrying out, where appropriate, those acts that cannot be postponed.

2. The Criminal Procedure Act shall apply insofar it is not opposed to the precepts of the present Act.<sup>28</sup>

##### **Article 25. *Notice of the accusation***

1. The proceedings for the offence to be tried by Jury having been opened, the Investigating Judge shall immediately notify this to the accused. With the aim of detailing the accusation he shall summon the accused, the Public Prosecutor and other parties in the proceedings to appear within five days. At the time of the summoning, the criminal complaint or lawsuit shall be notified to the accused, if this has not been already effected. The accused shall be duly assisted by a solicitor of his choice or failing that a solicitor on duty.

2. If those offended or damaged by the offence are not already parties in the proceedings, they shall be summoned to be heard in the hearing set forth in the preceding Section, and at the time of the summoning, they shall be instructed in writing, of the rights referred to in Articles 109 and 110 of the Criminal Procedure Act, if this has not already been effected. In particular, they shall be informed of the right to formulate allegations and to request what they consider relevant, if they were to legally appear in the aforesaid act and to request, subject to the conditions set forth in Article 119 of the aforesaid Act, the right to free legal counsel.

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<sup>27</sup> Article amended by Article 1.23 of Organic Act 8/1995, of 16th November

<sup>28</sup> Section 1 amended by Article 1.24 of Organic Act 8/1995, of 16th November



3. During the aforesaid hearing, the Investigating Judge shall begin by hearing the Public Prosecutor and the private prosecutors parties to the proceedings, successively who shall specify the accusation. Following this, the counsel for the defence shall also be heard, who shall make the submissions he may consider relevant for the defence and may request the dismissal of the case, if there were cause for it, pursuant to the provisions set forth in Articles 637 or 641 of the Criminal Procedure Act. In their interventions, the parties may request the investigation measures they consider relevant.<sup>29</sup>

#### **Article 26. *Ruling on the continuation of the proceedings***

1. Once all parties have been heard, the Investigating Judge shall decree the continuation of the proceedings or the dismissal thereof, if there were grounds for such a ruling, pursuant to the provisions of Articles 637 or 641 of the Criminal Procedure Act.

2. If the Public Prosecutor and other parties in the proceedings call for dismissal, the Judge may adopt the resolutions referred to in Articles 642 and 644 of the Criminal Procedure Act.

The decree dismissing the case may be appealed before the Provincial Court.<sup>30</sup>

#### **Article 27. *Investigation measures***

1. If the Investigating Judge decrees the proceedings to continue, he shall also rule on the relevance of the measures requested by both parties, ordering the execution only of those he considers essential to decide on the opening of the trial and those that may not be carried out during the preliminary hearing foreseen in this Act.

2. The parties may also request new measures within five days following said hearing or the last measure carried out. The parties concerned shall be notified of the aforesaid circumstance for which they can apply for whatever may be in their interest.

3. If the Judge were to consider that the requested measures are not necessary and order none of his own motion, he shall again summon the parties in order for them to request, within five days, what they may deem relevant with regard to the opening of the oral trial, submitting their provisional conclusions in writing. The Judge shall order the same when he deems more measures to be unnecessary, even when the carrying out of those already ordered has not finalised.<sup>31</sup>

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<sup>29</sup> Section 1 amended by Article 1.25 of Organic Act 8/1995, of 16th November

<sup>30</sup> Article amended by Article 1.22 of Organic Act 8/1995, of 16th November.

<sup>31</sup> Article amended by Articles 1.28 to .30 of Organic Act 8/1995, of 16th November.

## **Article 28. *Prima facie* evidence of a different offence**

If the measures taken were to provide *prima facie* evidence of an offence different from that which is the object of proceedings or of the involvement of persons other than those accused, Article 25 of this Act shall be applied or, in the event, the relevant proceedings shall be commenced if the offence is not subject to trial by Jury.<sup>32</sup>

## **Article 29 *Writ requesting opening of trial and of accusation***

1. The content of the writ requesting the opening of the trial shall fulfil the provisions contained in Article 650 of the Criminal Procedure Act.

2. The aforesaid writ shall be conveyed to the representation of the accused, who shall then submit a writ pursuant to the terms of Article 652 of the Criminal Procedure Act.

3. In both cases, the alternatives detailed in Article 653 of the Criminal Procedure Act may also be used.

4. In their respective writs, the parties may propose additional measures to be carried out during the preliminary hearing, provided that they are not a repetition of those already carried out.

5. If the parties deem that all proposed criminal offences which are the object of the accusation are not those belonging to the Jury's purview, they shall call for the correct procedure to be applied in their respective writs.

If the parties consider that the lack of competence only applies to one or more offences included in the accusation, the request shall be limited to the corresponding attestation of the written record of the proceedings, with reference to the offence or offences that must be excluded from the procedure of trial by Jury, to be issued and conveyed to the relevant jurisdictional body for the procedure to continue thereat for that offence or offences.<sup>33</sup>

## **Section 2. Preliminary hearing**

### **Article 30. *Convening the preliminary hearing***

1. Once the defence's writ has been presented, the Judge shall choose the closest date possible for the preliminary hearing of the parties regarding the appropriateness of the trial, unless the investigation measures requested by the defence and considered relevant by the Judge, are still pending. Once

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<sup>32</sup> Article amended by Article 1.31 of Organic Act 8/1995, of 16th November

<sup>33</sup> Section 5 amended by Article 1.32 of Organic Act 8/1995, of 16th November.

the aforesaid measures have been carried out, the Judge shall set such date. Concurrently, the Judge shall decide on the acceptance and execution of the measures proposed by the parties for said preliminary hearing.

If the Judge does not convene the preliminary hearing, the parties may file a complaint with the Provincial Court.

**2.** The counsel for the defence may waive the preliminary hearing, accepting the holding of the oral trial and the Judge shall decree the opening of the trial pursuant to the provisions of Article 33 of this Act. In order for said waiver to have effect, it must be requested by the counsel for the defence of all those accused.<sup>34</sup>

### **Article 31. *Holding the preliminary hearing***

**1.** On the designated day and time the preliminary hearing shall be held, starting by the examination of the measures proposed by the parties.

**2.** At this time, the parties may propose measures to be carried out in the act. The Judge shall refuse any measure proposed that is not be essential for the appropriate ruling on the grounds for trial.

**3.** Once the accepted measures have been finalised, the parties shall be heard on the appropriateness of the opening of the trial and, where appropriate, on whether the trial is to be by Jury. The accusations may amend the terms of the petition for the opening of a trial, provided that no new elements that may alter the deed or the person accused are introduced.

### **Article 32. *Decree of dismissal or opening the trial***

**1.** Once the preliminary hearing has concluded, at the same time or during the three following days, the Judge shall hand down a decree deciding on the opening or non-opening of the trial. If he decides on the non-opening of the oral trial he shall order the dismissal of the case. He may similarly decree the opening of the trial and the partial dismissal thereof pursuant to Article 640 of the Criminal Procedure Act if the provisions of Article 637.3 of the Criminal Procedure Act are applicable to any of the persons accused.

**2.** The decree approving the dismissal is subject to appeal before the Provincial Court. The resolution that accords the opening of the trial cannot be appealed, without prejudice to the provisions set forth in Article 36 of this Act.

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<sup>34</sup> Section 1 amended by Article 1.33 of Organic Act 8/1995, of 16th November.

3. Before a resolution is adopted, the Judge may also order additional measures to be carried out if he considers them necessary as a result of preliminary hearing.

4. Where appropriate, the Judge shall order the correct procedure to be applied when it is not that regulated by this Act. If he considers the procedure covered by Title II of Book IV of the Criminal Procedure Act is appropriate, he shall order the opening of the trial and shall convey the case to the Provincial Court or the relevant Judge of the Criminal Jurisdiction, so that the case may be heard pursuant to the provisions of Articles 785 and following ones contained in the aforesaid Act.<sup>35</sup>

**Article 33. *Content of the decree ordering the opening of the trial***

The decree that orders the opening of the trial shall determine:

- a) The fact or offences to be tried that the person is indicted of and consequently those which for which prosecution is justified;
- b) The person or persons that may be tried as indicted persons and those as third parties with civil liability;
- c) The reasons for the opening of the trial with reference to the applicable legal provisions;
- d) The relevant body to carry out the trial.<sup>36</sup>

**Article 34. *Attestations***

1. In the same resolution, the Judge may order attestations to be issued of the following:

- a) The parties' writs defining the offence;
- b) The documentation of the non-reproducible proceedings that must be ratified during the trial;
- c) The decree ordering the opening of the trial.

2. The attestation, objects and evidence of the offence shall be promptly conveyed to the relevant Court for the trial.

3. At any time, the parties may request attestations to be used later on in the trial.<sup>37</sup>

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<sup>35</sup> Section 4 amended by Final Provision 1.1 of Act 38/2002, of 24th October

<sup>36</sup> Article 33 (c) amended by Article 1.34 of Organic Act 8/1995, of 16th November

<sup>37</sup> Section 1 amended by Article 1.35 of Organic Act 8/1995, of 16th November.

**Article 35. *Summoning of the parties and the appointment of the Trial Judge***

1. The Judge shall order the summoning of the parties for these to formally appear before the relevant Court for the trial within fifteen days.
2. Once the written record of the proceedings is received by the Provincial Court, the Trial Judge shall be appointed from the roll.

**Section 3<sup>a</sup> Preliminary issues before the trial by Jury**

**Article 36. *Submission of preliminary issues***

1. At the time of formally appearing, the parties may:
  - a) Raise any of the issues or exceptions contained in Article 666 of the Criminal Procedure Act or present a plea that the procedure is inappropriate or that the competence is of another Court;
  - b) Allege the infringement of a fundamental right;
  - c) Suggest expanding the scope of the trial to include a fact previously rejected by the Investigating Judge;
  - d) Request the exclusion of a fact included in the trial if the party claims the latter was not included in the writs of accusation;
  - e) Contest the means of evidence proposed by the other parties and to propose alternatives.

The other parties shall be duly notified so that they may file a writ against any issues raised within three days.

2. If any of the aforesaid incidents were raised they shall be dealt with pursuant to Articles 668 to 677 of the Criminal Procedure Act.

**Article 37. *Decree ordering the facts to be tried, declaring the appropriateness of the evidence and deciding the day of the trial***

Once the parties have formally appeared and, in the event, the issues proposed have been resolved without this impeding the trial, the Trial Judge shall issue a decree pursuant to the rules described herein:

- a) The order shall specify, in separate paragraphs, the deed or deeds to be tried. The paragraphs shall not include terms that are susceptible of being understood as proven or not proven. Likewise, any reference that is not absolutely essential for the legal definition of the deed shall be excluded.

The alleged facts presented by both the defence and the accusation shall be included in the decree. If the allegations are mutually exclusive, then only one shall be selected.

b) Following this and fulfilling the same criteria, in separate paragraphs, the decree shall go on to specify the facts that constitute the degree of execution of the offence and of involvement of the accused, as well as the possibility of accepting exempting, aggravating or mitigating circumstances.

c) Following this, it shall then determine the offence or offences that the aforesaid deeds constitute.

d) Likewise, the decree shall decide on the appropriateness of the evidence submitted by the parties and on the processing thereof.

If the decree finds the evidence relevant, an appeal may not be lodged. If a means of evidence is refused the parties may lodge a protest in view of a subsequent appeal.

e) The day of the trial shall also be decided, adopting the measures referred to by Articles 660 to 664 of the Criminal Procedure Act.<sup>38</sup>

## **Section 4<sup>a</sup>. Constitution of the Jury**

### **Article 38. Attendance of the Jurors and objections to Jury candidates**

**1.** On the day and time set for the trial, the Trial Judge, assisted by the Court Clerk and in the presence of the parties, shall convene. If at least twenty of the summoned Jury candidates attend, the Trial Judge shall open the session. If said number is not in attendance, the following Article shall apply.

**2.** The Trial Judge shall question the Jurors again to assure that none of them fail to meet the requirements or incur in a cause of ineligibility, disqualification or excusal as determined in this Act. The parties, through the Presiding-Judge or by themselves, may also question the Jurors on the matters mentioned in the preceding paragraph.

**3.** The parties may also challenge those Jurors in whom a cause of ineligibility, disqualification or prohibition concurs.

Challenges shall be heard and decided on the spot by the Trial Judge, in the presence of the parties and having heard the Juror candidate affected.

**4.** The Trial Judge shall rule on the challenge, with no possibility of appeal. However, the party may protest for the purposes of the appeal that may be lodged against the judgment.<sup>39</sup>

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<sup>38</sup> Section c) was added and former Sections c) and d) were reordered to appear as d) and e) by Article 1.36 of Organic Act 8/1995, of 16th November

<sup>39</sup> Sections 1 and 2 amended by Article 1.37 of Organic Act 8/1995, of 16th November.

**Article 39. *Completing the minimum number of Jury candidates and possible sanctions***

1. If at least twenty Jury candidates cannot be obtained, as a result of the non-attendance thereof or of the exclusions pursuant to the provisions of the preceding Paragraph, a new hearing shall be called within the next fifteen days. The attendees and absentees and a maximum of eight more Jury candidates shall be drawn by ballot from the biennial register shall be summoned to the effect. If at this point the parties present grounds for the disqualification, ineligibility or prohibition of any of the designated Jurors already accepted by the Trial Judge, without objection from the other non-challenging parties, a new draw by ballot shall be held until eight more candidates are secured.

2. The Trial Judge shall impose a fine of 25,000 pesetas on any Juror who does not attend when first summoned nor does not provide justification for the absence. If said Juror does not attend a second time, the fine shall be between 100,000 and 250,000 pesetas.

At the second summoning, the Trial Judge shall ensure that candidates are warned of the sanction they may incur if they do not attend.

The economic situation of the absentee shall be taken into account at the time of the deciding the amount of the fine.

3. If the second summoning fails to obtain the minimum number of attendees, successive summoning or additional draws, shall be carried out in the same way as the first summoning, until the necessary attendance is obtained.

4. In any event, once the Jury has been constituted, the steps necessary to produce the means of evidence proposed shall be adopted.<sup>40</sup>

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

1. If the required number of Jurors appears, a new draw shall be held to select the nine Jurors who shall form part of the Jury and two alternate Jurors.

2. The names of the Juror shall be placed in the ballot box and drawn one by one by the Court Clerk who shall read the names aloud.

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<sup>40</sup> Sections 1 to 3 amended by Article 1.38 of the Organic Act 8/1995, of 16th November.

3. The parties, after posing to the Juror the questions authorised by the Trial Judge, the accusation may peremptorily challenge four Jurors and the defence may peremptorily challenge another four.

If there are several accusing or accused parties, they must act in mutual agreement to indicate the Jurors subject to peremptory objection. If an agreement is not reached, the order in which the accusing and accused parties may lodge their objection shall be decided by ballot until the quota has been reached.

The civil plaintiff and third parties with civil liability may not present a peremptory objection.

4. The selection of the alternate Jurors shall be carried out in the same way. When there are only two candidates left to choose between, peremptory objections shall not be accepted.

5. Once the draw has been completed and a record thereof made by the Court Clerk, the Jury shall be constituted.<sup>41</sup>

#### **Article 41. *Swearing in of the Jurors***

1. Once the Jury has been constituted the candidates shall take an oath or make the promise to become Jurors. The candidates standing, Trial Judge shall say:

“Do you swear/promise to duly and faithfully carry out the function of Juror, impartially, without fear or favour, examining the indictment, evaluating the evidence and giving a verdict of guilty or not guilty with reference to the accused...and the offences tried, as well as keeping the deliberations secret?”

2. The Jurors shall approach the Trial Judge, one by one, and standing in front of him, they shall then say either “I swear” or “I promise” before taking a seat in the jury box.

3. When all of the Jurors have sworn their oath or made their promise, the Trial Judge shall order the opening of the public hearing.

4. No one shall perform any duty as Juror until he has not sworn the aforesaid oath or has promised. Whoever refuses to swear the oath or to promise shall be obliged under penalty of a 50,000 peseta fine that the

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<sup>41</sup> Sections 1 and 3 amended by Articles 1.40 and .41 of the Organic Act 8/1995, of 16th November.



Trial Judge shall impose in the act. If the person concerned continues to refuse, an attestation thereof shall be issued and conveyed and the alternate Juror shall be called.<sup>42</sup>

## **Section 5<sup>a</sup>. The trial**

### **Article 42. *Application of the Criminal Procedure Act***

1. After the swearing of the oath or making of the promise, the trial shall be opened pursuant to the provisions of Articles 680 et seq. of the Criminal Procedure Act.

2. The accused person or persons shall find themselves positioned in a way that makes immediate communication with the counsel for the defence possible.

### **Article 43. *Decision on in camera trial***

In order to adopt the decision on an in camera trial, the Trial Judge shall consult the Jury and hear the parties.

### **Article 44. *Attendance of the accused and the counsel for the defence***

The trial may only take place if the accused and counsel for the defence attend. The latter shall be at the disposal of the Jury until the verdict is announced, and the trial held before as Jury shall take precedence over any other summons or procedural action, irrespective of the jurisdiction. .

The aforesaid notwithstanding, if there were several accused persons and one of them were to not attend, the Trial Judge, having heard the parties, may order the continuation of the trial for the remaining parties.

The unjustified absence of the duly summoned civil liability third party shall not by itself be a cause neither for the suspension of the trial nor for finding for or against such third party.<sup>43</sup>

### **Article 45. *Prior allegations from the parties submitted to the Jury***

The trial shall begin with the Court Clerk reading out the writs defining the accusation and defence. The Trial Judge shall then give the parties an opportunity to present their allegations, which they deem pertinent for the explanation of the writs and the purpose of the proposed evidence, to the Jury. In the act, the parties may present the Trial Judge with new evidence

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<sup>42</sup> Sections 1 and 3 amended by Article 1.42 of Organic Act 8/1995, of 16th November

<sup>43</sup> Paragraph 1 amended by Article 1.44 of Organic Act 8/1995, of 16th November

to be examined and call for the ordering thereof, which shall be decided by the Trial Judge once any party opposed to the acceptance of said evidence has been heard.

**Article 46. *Particularities of the evidence***

1. Jurors, via the Trial Judge and after the declaration of relevance, may submit a writ requesting for matters Jurors consider relevant for the clarification of the facts dealt with by the evidence, to be directed at witnesses, experts or the accused.

2. The Jurors themselves shall examine the books, documents, papers and other pieces of evidence as referred to in Article 726 of the Criminal Procedure Act.

3. Evidence requiring first-hand inspection shall be examined by all members of the Jury at the site of the event.

4. The proceedings decided on by the Investigating Judge may be shown to the Jurors during the examination of the evidence.

5. The Public Prosecutor, the counsel for the defence and that of the prosecution may question the accused, witnesses and experts on the contradictions they believe to exist between what they have heard during the trial and the pre-trial phase. The aforesaid notwithstanding, none of the aforesaid statements themselves may be read aloud, but the attestation of whoever asks the questions shall be added to the minutes forthwith.

The statements uttered during the pre-trial phase, excluding those submitted as part of pre-trial evidence, shall have no evidentiary value of the facts stated therein.

**Article 47. *Suspension of the hearing***

In the event of the suspension of a trial, pursuant to the Criminal Procedure Act, the Trial Judge may decide on the dissolution of the Jury, which he shall order, in all cases, provided that the aforesaid suspension has to be extended by five days or more.

**Article 48. *Amendments to provisional and final conclusions***

1. The evidence having been produced, the parties may amend their provisional conclusions.

**2.** The Trial Judge shall entreat the parties, in the terms set forth in Section 3 of Article 788 of the Criminal Procedure Act, and where appropriate, in the terms set forth Section 4 of the aforesaid precept.

**3.** If the parties in their final conclusion define the facts as elements constituting an offence not to be tried by Jury, the trial by Jury shall continue.<sup>44</sup>

**Article 49.** *Advance dissolution of the Jury*

Once the prosecutors have made their report, if the counsel for the defence considers that there is insufficient evidence to justify the accused being found guilty, he may request the Trial Judge to dissolve the Jury or the Trial Judge may be do so on his own motion.

If absence of evidence for conviction only affects some of the deeds or one of the accused, the Trial Judge may decide that a verdict on the aforesaid need not be pronounced.

In such cases, within three days, a judgement of acquittal shall be issued.

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

**1.** Likewise, if the parties were to request sentencing pursuant to the writ requesting the handing down of the maximum penalty, or pursuant to the request submitted by all parties at that moment, which shall exclude facts not considered by the trial and with a definition of the offence not more serious than that stated in the provisional conclusions, the Jury shall be dissolved. The penalty agreed may not exceed six years imprisonment, alone or in conjunction with a fine and with deprivation of other rights.

**2.** The Trial Judge shall issue the relevant judgment, having taken into consideration the facts admitted by the parties, but, if he were to understand that enough motives exist to consider that the deed to be tried has not been committed or not committed by the accused, he shall not dissolve the Jury and shall order the continuation of the hearing.

**3.** Similarly, if the Trial Judge were to understand that the facts accepted by the parties may not constitute a criminal offence, or that a case of exemption or mandatory mitigation were to concur, he shall not dissolve the Jury, and after hearing the parties, he shall submit the object of verdict to the Jury.

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<sup>44</sup> Section 2 amended by Final Provision 1.2 of Act 38/2002, of 24th October

**Article 51.** *Dissolution of the Jury due to withdrawal of the petition of conviction*

If the Public Prosecutor and other prosecutors, during their final conclusions, or at any point preceding the trial, were to decide to withdraw their petition for conviction of the accused, the Trial Judge shall dissolve the Jury and issue a judgement of acquittal.

CHAPTER IV  
ON THE VERDICT

**Section 1. Determination of the object of the verdict**

**Article 52.** *The object of the verdict*

1. The trial having concluded, the final reports submitted and the accused heard, the Trial Judge shall submit the object of the verdict to the Jury in writing, pursuant to the following rules:

a) He shall narrate in separate, enumerated paragraphs the facts alleged by the parties and those that the Jury is to declare as proven or not proven, differentiating between those, in favour and to the detriment of the accused. The Trial Judge may not include both facts in favour and to the detriment of the accused or facts that may be susceptible of being declared as proven or not proven, in the same paragraph.

The Trial Judge shall begin by exhibiting those facts that constitute the main deed of the prosecution, and shall finish by narrating the facts alleged by the defence. If the simultaneous consideration of the former and the latter as proven is not possible without contradiction, only one proposition shall be included.

When the declaration of a fact as proven is implied if another is so declared, the latter shall be proposed with due priority and separation.

b) The alleged facts that can determine the estimation of a case of exemption of responsibility shall be subsequently detailed, following the same criteria of separation and enumeration of the paragraphs.

c) The narration of the deed that shall determine the degree of execution, involvement and alteration of responsibility, shall be included in successive, separate and enumerated paragraphs.

d) Finally, the deed to be tried of which the accused shall have to be declared guilty or not guilty shall be determined last.

e) If various offences are being tried, the prior separated and successive drafting for each offence shall be carried out

f) If there were several accused, the aforesaid shall also apply.

g) The Trial Judge, after having viewed the results of the evidence, may add facts or legal qualifications favourable to the accused provided that they do not imply a material variation of the deed to be tried nor produce defencelessness.

If the Trial Judge were to understand that the evidence produced involves such a material variation, he shall order an attestation thereon to be issued and conveyed.

2. Likewise, the Trial Judge shall secure, where appropriate, the opinion of the Jury on the benefit of a suspended sentence and on requesting the Royal pardon in the judgment itself.<sup>45</sup>

### **Article 53. *The hearing of the parties***

1. Prior to submitting the object of the verdict, in writing, to the Jury, the Trial Judge shall hear the parties, who may request the inclusions or exclusions they consider relevant, to be decided without further ado by the Trial Judge.

2. The parties whose petitions are rejected may protest for the purposes of the appeal that may be lodged against the judgment.

3. The Jury Clerk shall incorporate the writ containing the object of the verdict to the record of the trial, handing in a copy of the aforesaid to the parties and to each of the Jurors and shall include rejected petitions of the parties in the copy.

### **Article 54. *Instructions to Jurors***

1. The Trial Judge, in a public hearing, with the attendance of the Court Clerk and in the presence of the parties, shall immediately submit the writ of the object of the verdict to the Jury. At the same time, he shall instruct them on the function conferred upon them, the rules deciding the deliberation thereof, the voting and the way in which they must reflect their verdict.

2. The Trial Judge shall also explain to the Jury, in terms its members can understand, of the nature of the facts covered in the discussion, determining the circumstances constituting the offence indicted and causes for exemption or amendment of accountability. All of the aforesaid shall with reference to the facts contained in the writ submitted to the Jurors.

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<sup>45</sup> Sections 1 g) and 2 amended by Article 1.44 and 1.45 of Organic Act 8/1995, of 16th November.

3. The Trial Judge shall take care not to allude in any way to his own opinion on the results of the evidence but he shall allude to the need to reject means of evidence that he has declared unlawful or void. If, after deliberation, the Jurors have not managed to resolve any doubts they had regarding the evidence, the Trial Judge shall inform them that they are to decide in the sense more favourable to the accused.<sup>46</sup>

## **Section 2. Deliberation and verdict**

### **Article 55. *Deliberation of the Jury***

1. The Jury shall immediately retire to the room designated for deliberation.
2. The person whose name was drawn first shall initially preside over the deliberation, before the Jurors decide on a spokesperson.
3. The deliberation shall be secret and none of the Jurors shall comment on the content thereof.

### **Article 56. *Sequestration of the Jury***

1. The deliberation shall take place in camera and the Jury shall not be permitted to communicate with anyone until the verdict has been reached, the measures to this effect being adopted by the Trial Judge.
2. If the deliberation were to last long enough to necessitate a break, the Trial Judge on his own motion or at the request of the Jury, shall authorise a recess during which the sequestration shall not be interrupted.<sup>47</sup>

### **Article 57. *Additional instructions***

1. If any of the Jurors were to have any questions regarding any aspect of the object of the verdict, the presence of the Trial Judge may be requested, in writing or via the Court Clerk, to give additional instructions. The Trial Judge shall appear in a public hearing, assisted by the Court Clerk and in the presence of the Public Prosecutor and the other parties.
2. Once two days have passed since the beginning of the deliberation, the Jurors not having submitted the record taken of the voting stage, the Trial Judge may summon them to appear pursuant to the previous Section. If, during the aforesaid hearing, none of the Jurors were to express any doubt

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<sup>46</sup> Section 2 amended by Article 1.46 of Organic Act 8/1995, of 16th November.

<sup>47</sup> Section 2 amended by Article 1.47 of Organic Act 8/1995, of 16th November.

on any of the aspects of the object of the verdict, the Trial Judge shall issue the instructions set forth in Section 1 of Article 4 of this Act on the conveyance of the record therein described.

**Article 58.** *Roll-call voting*

1. Roll-call voting shall be the preferred method, with votes cast aloud and in alphabetical order and the spokesperson voting last.

2. No Juror may abstain from voting. If a Juror were to insist on abstaining, this shall go on the record, and a 75,000 peseta fine shall be imposed by the Trial Judge in due course. If, after the proceedings are on record and the demand reaffirmed, the Juror were to persist in refusing to vote, this shall also go on record, followed by the relevant attestation shall be issued for the criminal liability deriving therefrom to be determined.

3. In any event, abstention shall be understood as a vote in favour of the non-consideration of a prejudicial fact for the defence as proven and as a non-guilty verdict for the accused.

**Article 59.** *Voting on the facts*

1. The spokesperson shall put each one of the paragraphs describing the facts, just as they were expressed by the Trial Judge, to a vote. The Jurors shall vote as to whether they consider the aforesaid facts proven or not proven. To be declared as such seven votes are required when they are detrimental to the accused and five votes, when in favour thereof.

2. If the aforesaid majority were not reached, the relevant facts with comments deemed relevant by whoever proposes an alternative shall be put to vote, and once the paragraph has been re-written to this effect, it shall be put to vote until the required majority is reached.

The amendment may not involve not putting to a vote part of the points of fact proposed by the Trial Judge. A new paragraph may be added provided that it does not involve a material alteration nor result in a new aggravation of liability imputed by the prosecution.

**Article 60.** *Voting on guilty or not guilty verdict, suspended sentences and requesting a Royal pardon*

1. If the necessary majority were to be reached during the voting on the points of fact, a verdict of guilty or not guilty for each offence indicted to the each accused person shall be put to the vote.

2. Seven votes shall be necessary for a verdict of guilty and five votes for a verdict of not guilty.

3. The opinion of the Jury on suspending the sentence of the guilty party, as well as on requesting a Royal pardon, shall require five Jurors to vote in favour thereof.<sup>48</sup>

#### **Article 61. *Minutes of the voting***

1. Once voting has finished, minutes containing the following sections shall be drawn up:

a) A first section, commenced in the following way: “The Jurors have deliberated on the points of fact to be resolved by them and have found the following proven. They declare the following as such through a (unanimous or majority) verdict ...”

If the text proposed by the Trial Judge were voted for, the minutes may simply indicate the relevant number.

If the voted text were to include any amendment, the minutes shall reproduce a text in line to the one voted for.

b) A second section, commenced in the following way: “Likewise, the Jurors have not found the following points of fact proven. They declare the points of fact detailed and enumerated on the document presented unto them as such, through a (unanimous or majority) verdict...”. The paragraph numbers shall be indicated on the aforesaid document, in order for the text to be reproduced.

c) A third section, commenced in the following way; “Through a (unanimous or majority) verdict, the Jurors therefore find the accused... guilty/not guilty of the criminal deed of...”

In this section a separate declaration for each offence and indicted person shall be included. In the same way, the Jury’s opinion regarding the granting a suspended sentence to the guilty party in the event of legal provisions to the effect concurring, and the request of a Royal pardon, shall be stated where appropriate.

d) A fourth section, commencing in the following way: “The Jurors have handled the following as grounds for the conviction expressed in the preceding declarations:...”. This section shall contain a succinct explanation of the reasons why the Jurors have declared or refused to declare those points of fact as proven.

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<sup>48</sup> Section 1 amended by Article 1.48 of Organic Act 8/1995, of 16th November.



e) A fifth section shall state the incidences that have occurred during the deliberation, avoiding any information that may violate the secret nature thereof, but including an indication of a refusal to vote.

**2.** The minutes shall be drawn up by the spokesperson, unless the majority disagrees with him, in which case the Jurors shall designate another minute taker.

At the request of the spokesperson, the Trial Judge may authorise the Court Clerk or an assistant official to draw up or record the minutes. Likewise, the designated minute taker appointed to substitute the spokesperson may also request the aforesaid.

**3.** The minutes shall be signed by all of the Jurors and the spokesperson shall sign on behalf of anyone who cannot. If one of the Jurors were to refuse to sign, this incident shall be stated in the minutes.<sup>49</sup>

#### **Article 62.** *Reading the verdict*

The Trial Judge shall be informed once the minutes have been drawn up and a copy shall be conveyed to him. Pursuant to the provisions of the following Article, the Trial Judge shall summon the parties to appear immediately, using the method most conducive thereto, so that the verdict may be read by the Jury spokesperson in a public hearing.

#### **Article 63.** *Remanding of the minutes to the Jury*

**1.** The Trial Judge shall remand the minutes to the Jury, if upon examining a copy thereof, he considers any of the following circumstances to concur:

- a) That a judgement on the totality of the points of fact has not been passed;
- b) That a judgement of guilty or not guilty of all the accused and the totality of the criminal offences of which they have been indicted, has not been passed;
- c) That none of the votes on the aforesaid points have obtained the necessary majority;
- d) That various statements are contradictory; either those relating to the points of fact declared to be proven or the pronouncement of guilt with regard to aforesaid statements of the proven facts;
- e) That an error in the deliberation and voting proceedings has occurred.

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<sup>49</sup> Section 1 c) amended by Article 1.48 of Organic Act 8/1995, of 16th November

2. If the minutes were to include a pronouncement on a point of fact as proven that is not among those proposed by the Judge and that implies a material alteration of facts of the case, or that determines a higher degree of responsibility than that the accused has been indicted of such a pronouncement shall be ignored.

3. Prior to devolving the minutes, Article 53 of this Act shall be applied.

**Article 64.** *Explaining the remanding of the minutes*

1. On devolving the minutes, the Jury being duly constituted, with the assistance of the Court Clerk and in the presence of the parties, the Trial Judge shall explain in detail the reasons that justify the devolving thereof and he shall specify the way in which the procedural errors may be corrected or the points on which new pronouncements are required.

2. The Court Clerk shall include the aforesaid incident in the minutes.

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

1. If after devolving the minutes for a third time, the denounced errors were to remain uncorrected or the necessary majorities are not secured, the Jury shall be dissolved and a new trial by Jury shall be convened.

2. If, a new trial is held but a verdict from the Jury is not obtained due to any of the reasons examined in the preceding Section, the Trial Judge shall dissolve the Jury and issue a judgement of acquittal.

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

1. The Jury shall cease in its duties after the verdict has been read out.

2. Until this point, the alternate Jurors shall have remained at the disposal of the Court at the designated venue.

CHAPTER V  
ON THE JUDGMENT

**Article 67.** *Verdict of not guilty*

If a verdict of not guilty were to be pronounced, the Trial Judge shall issue a judgement of acquittal of the accused in the act, and ordering, where appropriate, the immediate release from custody thereof.

**Article 68. *Verdict of guilty***

If a verdict of guilty were to be pronounced, the Trial Judge shall hear the Public Prosecutor and the other parties so that they can inform him on the penalty or measures to be imposed on each one of the guilty parties and concerning civil liability. Such report shall also refer to the concurrence of legal provisions for a suspended sentence, if the Jury has indicated its favourable opinion thereon.

**Article 69. *Written record of the sessions***

1. The Court Clerk shall draw up a written record of each session, succinctly stating the most relevant aspects of incidents occurred, and literally describing the protests lodged by the parties and the resolutions of the Trial Judge on the aforesaid incidents.

2. The record shall be read out at the end of each session and shall be signed by the Trial Judge, Jurors and counsels for the parties.

**Article 70. *Content of the judgment***

1. The Trial Judge shall deliver the judgment as set forth in Article 248.3 of the Organic Act on the Judiciary, including the points of fact declared proven, the offence that is subject to conviction or acquittal and the relevant contents of the verdict.

2. Likewise, if a verdict of guilty has been pronounced, the judgment shall summarise the evidence sustaining the verdict of guilty as mandated by the constitutional guarantee of the presumption of innocence.

3. The judgment, to which the minutes of the Jury shall be added, shall be published and filed as legally provided, an attestation thereof being included in the written record of the proceedings.

## ADDITIONAL PROVISIONS

**Additional Provision One. *Pre-trial suppression***

Article 410 of Organic Act 6/1985, of 1st July, on the Judiciary, and Title II of Book IV of the Criminal Procedure Act are hereby repealed.

**Additional Provision Two. *Criminal infractions***

1. Articles 41.4 and 58.2 of this Act shall be applied to Jurors who do not carry out their duties without legitimate cause or who fail to fulfil the obligations imposed on them, resulting in a fine of between 100,000 and 500,000 pesetas.

**2.** Jurors who fail to fulfil the obligations imposed on them by Section 3 of Article 55 shall incur a penalty of major arrest and a fine of between 100,000 and 500,000 pesetas.

## TRANSITIONAL PROVISIONS

### **Transitional Provision One.** *On-going criminal cases*

Criminal proceedings already initiated or that are initiated due to facts that have occurred prior to the entry into force of this Act, shall be processed before the relevant jurisdictional body pursuant to the provisions in force when the facts occurred.

### **Transitional Provision Two.** *System of appeals*

The system of appeals set forth in this Act shall only be applicable to the legal resolutions handed down in proceedings initiated after the entry into force thereof.

### **Transitional Provision Three.** *First list of Jury candidates*

The first list of Jury candidate, which shall be of use until 31st December 1996, shall be obtained by implementing the provisions set forth in Articles 13, 14, 15 and 16 of this Act. Although the references made in those Articles to the months of September, October and November shall be understood, respectively, as references to the three consecutive months following the entry into force of the Transitional Provision.<sup>50</sup>

## FINAL PROVISIONS

### **Final Provision One.** *Amendment of the Organic Act on the Judiciary*

**1.** Sub-Section c) of Section 3 of Article 73 of Organic Act of the Judiciary 6/1985 of 1st July, whose current content shall henceforth be contained in Sub-Section d) of the same Section, shall henceforth be worded as follows:

“c) The hearing of appeals in the cases set forth by the laws.”

**2.** Section 2 of Article 83 of Organic Act on the Judiciary 6/1985 of 1st July, shall henceforth be worded as follows:

“2. The composition and competence of the Jury is regulated in the Organic Act on the Jury.”

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<sup>50</sup> Provision entered into force on 23rd July 1995, as set forth in Final Provision 5.

## **Final Provision Two. *Amendment of the Criminal Procedure Act***

The Articles and Sections listed below of the Criminal Procedure Act shall henceforth be worded as follows:

1. A second Paragraph is hereby added to Section 3 of Article 14 and shall henceforth be worded as follows:

“The aforesaid notwithstanding, within the cases of competence of the Judge of the Criminal Jurisdiction, if the offence were to be tried by Jury, the hearing and judgement thereof shall correspond to the latter.”

2. A second Paragraph is hereby added to Section 4 of Article 14 and shall henceforth be worded as follows:

“The aforesaid notwithstanding, within the cases of competence of the Provincial Court, if the offence were to be tried by Jury, the hearing and judgement thereof shall correspond to the latter.”

3. A third Paragraph is hereby added to Article 306 and shall henceforth be worded as follows:

“As soon as the opening of proceedings for a case to be tried by Jury is ordered, the Public Prosecutor shall be informed thereof and shall appear and intervene in the proceedings carried out before the Jury.”

4. A new Article 309 bis is hereby incorporated to the Act, worded as follows:

“Article 309 bis.

When the terms of a criminal complaint or the detailed account of the facts of a criminal lawsuit or a procedural measure brought against a person or persons, result in the indictment of an offence to be tried by Jury, the Judge shall open the proceedings as set forth in the regulating Act the Jury and, pursuant thereto, the indictment shall be immediately notified to the accused.

In any event, the Public Prosecutor, the other parties and the accused may request this and the Judge shall decide it in one day. If he were not to do so, or were to reject the petition, the parties may file a complaint before the Provincial Court that shall issue a ruling within eight days, securing first a report of the Investigating Judge via the fastest means possible.”

5. The new Article 504 bis 2 is hereby incorporated to the Act and shall henceforth be worded as follows:

“Article 504 bis 2.

Once a detainee is at the disposal of the Investigating Judge or Jury that shall hear the case, within the seventy-two hours that follow, the Judge shall summon the Public Prosecutor, the other parties and the accused to a hearing that shall be attended by the counsel for the defence chosen by him or by an on-duty solicitor. The Public Prosecutor and the accused, assisted by counsel for the defence thereof, shall be obliged to appear.

During the aforesaid hearing, evidence that may be examined in the act or within the following twenty-four hours, but under no circumstances exceeding seventy-two hours, may be proposed.

If, during such a hearing, if a party were to request the accused being remanded in custody or release on own recognizance, the Judge, having heard the parties, shall decide accordingly. If none of the parties so requests, the Judge shall necessarily put an end to the arrest and order the immediate release of the accused.

If, for whatever reason, the hearing were not to take place, the Judge shall remand on custody or decree the release on own recognizance, if the requirements are met and he were concerned by the risk of eluding justice. In this case, the Judge shall summon a hearing within the following seventy-two hours, adopting the disciplinary measures related to the reasons for the hearing not taking place.

The resolutions releasing the accused on own recognizance or otherwise shall be subject to appeal before the Provincial Court.”

6. The content of Article 516 is hereby obliterated.

7. Article 539 shall henceforth be worded as follows:

“Article 539

Decrees remanding in custody, releasing on bail or on own recognizance may be amended throughout the course of the case.

Consequently, the accused may be imprisoned or released as many times as deemed appropriate, and bail may be amended as much as necessary in order to guarantee the consequences of the trial.

At the request of the Public Prosecutor or of a prosecuting party and after the hearing referred to in Article 504 bis 2, a decree remanding in custody or aggravating the conditions of provisional liberty may be handed down concerning a person provisionally released.

The aforesaid notwithstanding, if, in the opinion of the Judge or Court, there were to be grounds suggesting a risk of escape, a decree to reform the interim measure or even remanding in custody shall be issued, in the case of the accused being free, but being obliged to hold a hearing within the following seventy-two hours.

If the Judge or Court deems that the accused is to be set free or that his conditions of liberty ought to be more favourable, a decree may be issued to this effect, at its own motion and at any time, without requiring petition by a party.”

8. The third Paragraph of Article 676 shall henceforth be worded as follows:

“Decrees resolving a plea to decline competence or a plea to admit exceptions 2.a, 3.a and 4.a of Article 666 are subject to appeal. If such appeal is rejected, such a decision may not be appealed again except in the appeal that may be lodged against the judgment, without prejudice of the provisions of Article 678.”

9. A second Paragraph is hereby added to Article 678 and shall henceforth be worded as follows:

“The foregoing shall not be applicable in the cases assigned to trial by Jury, notwithstanding what may be alleged when lodging an appeal against the judgment.”

10. A new third Paragraph is hereby added to Article 780 and shall henceforth be worded as follows:

“The proceedings having been commenced pursuant to the provisions of this Act, as soon as a deed appears that may constitute an offence to be tried by Jury, the provisions of Article 309 bis or 789.3, second and third Paragraphs, of this Act shall be applicable.”

The current third Paragraph of the aforesaid Article shall henceforth be the fourth Paragraph thereof.

11. One last Paragraph is hereby added to Article 781 and shall henceforth be worded as follows:

“As soon as the opening of proceedings for a case to be tried by Jury is ordered, the Public Prosecutor shall be so informed and he shall appear and intervene in the proceedings effected before the Jury”

12. Two new Paragraphs are hereby added to Section 3 of Article 789 and shall henceforth be worded as follows:

“When the terms of a criminal complaint or the detailed account of the facts of a criminal lawsuit or a procedural measure brought against a person or persons, result in the indictment of an offence to be tried by Jury, the Judge shall open the proceedings as set forth in the regulating Act the Jury and, pursuant thereto, the indictment shall be immediately notified to the accused.

In any event, the Public Prosecutor, the other parties and the accused may request this and the Judge shall decide it in one day. If he were not to do so, or were to reject the petition, the parties may file a complaint before the Provincial Court that shall issue a ruling within eight days, securing first a report of the Investigating Judge via the fastest means.”

13. The name of Book V is hereby amended to “On appeals, reviews and cassations”.

14. The new Title I, entitled “On appeals against judgments and certain decrees” is hereby incorporated to Book V and composed of the following Articles:

“Article 846 bis a).

Judgments handed down by the Trial Judge, within a Provincial Court and in first instance, may be appealed before the Civil and Criminal Chamber of the High Court of Justice of the relevant Autonomous Community.

Decrees handed down by the Trial Judge of a Jury dismissing the case, for whatever reason, and those that decide on matters referred to by Article 36 of the Organic Act on the Jury and those indicated in Article 676 of this Act, shall also be subject to appeal.

The Civil and Criminal Chamber shall be composed of three Judges to resolve these appeals.

Article 846 bis b).

Appeals may be lodged by the Public Prosecutor, the convicted person and the other parties, within ten days after the last notice of the sentence is served.

The party who does not appeal within the indicated deadline may appeal when challenging an appeal of another party; however this appeal shall be subject to the main appellant continuing with his own appeal.

Article 846 bis c).

The appeal shall be based on one of the following motives:



a) That during the proceedings or sentencing there has been a violation of the procedural rules and guarantees leading to defencelessness, provided the relevant correction was pleaded. This plea shall not be necessary if the alleged infraction were to imply the violation of a fundamental right guaranteed by the Constitution.

To these effects, the following may be alleged, inter alia: those related to Articles 850 and 851, the references to Judges in numbers 5 and 6 of the latter being deemed as applicable to the Jurors; the existence of errors in the verdict either due to bias in the instructions issued by the Judge or due to an error in the proposition of the object thereof, provided that the latter results in defencelessness, due to the concurrence of motives that ought to have lead to the remanding thereof to the Jury and the aforesaid remanding was not ordered.

b) That the judgment has incurred an infraction of a legal or constitutional precept in the legal definition of the facts, in the determination of the penalty, in the security measures or in the civil liability.

c) That the dissolution of the Jury was requested based on inexistence of evidence to convict and such a request was unduly rejected.

d) That the dissolution of the Jury was ordered but it was not appropriate to do so.

e) That the right to the presumption of innocence has been violated, given that the evidence produced during the trial did not provide any reasonable grounds for the conviction imposed.

So that the appeal may be processed, pursuant to Sub-Sections a), c) and d) the relevant protest must have been made at the time that the alleged infraction occurred.

Article 846 bis d).

Once a writ of appeal period is lodged, it shall be submitted to the other parties, who may lodge a conditioned appeal within a period of five days. If they were to lodge such an appeal, it shall be submitted to the other parties.

Once the period of five days is over, if the aforesaid conditioned appeal has not been lodged or if it has been lodged, the submission to other parties having been effected, all parties shall be summoned to appear before the Civil and Criminal Chamber of the High Court of Justice within ten days.

If the main appellant were not to appear or were to renounce the appeal, the written record of the proceedings shall be returned to the Provincial Court, the judgment shall be declared final and the execution thereof ordered.

Article 846 bis e).

Once the appellant has formally appeared, the date for the appeal hearing shall be fixed, summoning the parties, and in all events, the accused and third party with civil liability.

The hearing shall be public, the appealing party speaking first, followed by the Public Prosecutor and the other parties, if the Public Prosecutor were not the person who filed the appeal.

If a conditioned appeal has been lodged this party shall speak following the main appellant who may reply to him if he were to so choose.

Article 846 bis f).

Within the five days following the hearing, a judgement shall be handed down. If the appeal thereof were to be based on any of the motives referred to by Sub-Sections a) and d) of Article 846 bis 3, the case shall be remanded to the Court for a new trial to be held.

In the other cases, the appropriate resolution shall be handed down.”

15. Titles I and II of Book V currently in force shall become Titles II and III, respectively, of the same Book.

16. Article 847 shall henceforth be worded as follows:

“Article 847

Appeal for cassation due to the violation of the law and for violation of the legal procedure shall be available against: a) judgments handed down by the Civil and Criminal Chamber of the Higher Courts of Justice in first or the second instance; and b) judgments handed down by the Provincial Courts following a trial and in first instance.”

17. The first Paragraph of Article 84 shall henceforth be worded as follows:

“An appeal in cassation may only be lodged against decrees handed down by the Civil and Criminal Chambers of the Higher Courts of Justice or against final decrees of the Courts and only for violation of the law, when the law expressly authorises such an appeal.”

**Final Provision Three. *Rank of the Act***

This Act has organic rank, with the exception of Chapter III, Transitional Provision Two and Sections 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of Final Provision Two, which have the status of an ordinary Act of Parliament.

**Final Provision Four. *Future procedural reforms***

Within one year of the approval of this Act, the Government shall send a bill of amendment of the Criminal Prosecution Act, generalising the procedural criteria set forth in this Act and establishing proceedings founded on the accusatory principle and that of contradiction between the parties, as set forth in the provisions of the Constitution, similarly simplifying the investigation process in order to avoid the excessive prolongation thereof.

Likewise, within the aforesaid timeframe, the necessary legal reforms adapting the Statute and functions of the Public Prosecutor to such proceedings shall be adopted and the necessary material, technical and human measures shall be allocated by Parliament and the Government.<sup>51</sup>

**Final Provision Five. *Entry into force***

This Organic Act shall enter into force six months from the publication thereof in the “Official State Gazette”, with the exception of the provisions contained in Chapter II and Transitional Provision Three, which shall enter into force two months from the publication thereof.

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<sup>51</sup> Title added by Article 1.49 of Organic Law 8/1995, of 16th November

