

Avalent>Teie õigused>Süüdistatavad (kriminaalmenetlused)

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hispaania keel

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Defendants (criminal proceedings)

Hispaania

The Spanish Constitution recognizes the dignity of people, their inviolable rights, free development of personality, respect for the law and for the rights of others. The Constitution itself includes people's fundamental rights and freedoms, reflecting the Universal Declaration of Human Rights and international Treaties and agreements on human rights ratified by Spain. The general fundamental rights contained in the Spanish Constitution are developed in national law. The rights of defendants are set out in specific laws governing each type of case (Code of Criminal Procedure, for criminal cases, Code of Civil Procedure, for civil cases, etc.). These factsheets explain what happens when a person is suspected of or accused of a crime which is dealt with by a trial in court. For more information on minor offences like road traffic offences, which are usually dealt with by a fixed penalty like a fine, go to Factsheet 5. If you are the victim of a crime, you can find full information about your rights here.

Summary of the criminal process

The following is a summary of the normal stages in the criminal process.

Commencement

Facts that could be considered crimes appear:

Through an arrest made by the police;

Through a report made to the police;

Through a court complaint.

The person under arrest goes to the police station to make his/her statement to the police, if he or she wishes to do so. If he or she wants, he or she will be taken to the court to give his/her declaration.

Opening the criminal proceedings

The criminal investigation department conducts an investigation into the facts of an event which might constitute a crime under the control of the Judge in charge of the preliminary investigation and the inspection of the court's prosecutor.

At the end of the investigation there are two possible outcomes:

No crime has been committed. The investigation is closed and so are the proceedings. The proceedings end without holding a trial;

Evidence points to the existence of a criminal offence. Criminal investigations are opened.

Trial

The proceedings are sent to the [Public Prosecutor's Office](#) to file a bill of indictment and to the counsel for the defence so that he/she can file a statement of defence. Afterwards, the judge sets a date for trial.

When the trial has come to an end, the judge delivers a judgment, which may be:

a judgment against the defendant

a judgment for the defendant

An appeal may be filed with a Higher Court against the judgment. This is the end of the procedure.

Details about all of these stages in the process and about your rights can be found in the factsheets. This information is not a substitute for legal advice and is intended to be for guidance only.

Role of the European Commission

Please note that the European Commission has no role in criminal proceedings in Member States and cannot assist you if you have a complaint. Information is provided in these factsheets about how to complain and to whom.

Click on the links below to find the information that you need

[1 – Getting legal advice](#)

[2 – My rights during the investigation of a crime](#)

Arrest

Police questioning

Statement before the judge

[3 – My rights during the trial](#)

[4 – My rights after the trial](#)

[5 – Road traffic and other minor offences](#)

Related links

[Spanish Constitution](#)

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1 - Getting Legal Advice

Getting independent legal advice is very important when you are involved in some way with the criminal process. The factsheets tell you when and in what circumstances you are entitled to be represented by a lawyer. They also tell you what a lawyer will do for you. This general factsheet tells you how to find a lawyer and how the costs of the lawyer will be met if you cannot afford to pay.

Finding a lawyer

You will always be entitled to be defended by a lawyer appointed by you; if you do not have sufficient financial resources, you can apply for legal aid, as a detainee or a suspect.

If you need a lawyer and you have not been arrested, you can look at the Spanish Bar Association's [list of available lawyers](#).

Furthermore, you can contact the closest Bar Association if you have not been arrested so far:

Paying for a lawyer

People whose income is less than double the [national minimum wage](#) are entitled to legal aid. If you are turned down for legal aid, you must pay for the legal aid lawyer.

Related links

[Spanish Bar Association information about legal aid](#)

[Information about free legal advice](#)

[Ministry of Justice information about legal aid](#)

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2 - My rights during the investigation of a crime and before the case goes to court

What are the stages and what is the purpose of a criminal investigation?

The purpose of the investigation and the preliminary criminal investigation is to gather evidence related to the commission of a crime and to determine who might have committed the crime

The criminal investigation has two stages:

Police investigation: The police investigate the facts and the suspects to find out if a crime has been committed, what the circumstances were, or if nothing happened. They contact the alleged suspects, search for relevant evidence and witnesses.

Court investigation: If the police find any evidence that points to the existence of a crime, the judge in charge of preliminary investigations will investigate the facts and take the evidence that s/he considers necessary, question the people involved, may visit the scene of the crime, question witnesses, examine expert reports, etc.

If the judge considers that no crime has been committed, he or she will file the case, and no trial will be held (no need to adjudicate). Otherwise, the trial stage will begin.

The [Public Prosecutor's Office](#) must be kept informed during the criminal investigation and, if it decides that the evidence does not point to the existence of a criminal offence, it may request the closure of the proceedings.

My rights during the investigation

Right not to make a statement;

Right not to give evidence against myself;

Right to be presumed innocent;

Right to respect for my physical and moral integrity;

Right to respect for my dignity;

Right not be discriminated against on grounds of age, sex, religion, opinion, nationality or any other personal circumstance;

Right to be assisted by a defence lawyer of my choice or by a legal-aid lawyer;

Right to remain silent;

Right to have an interpreter if I do not understand the language;

Right to be heard;

Right to challenge the evidence against me.

For more detailed information about your rights during the various stages of the investigation, click on the links below:

[Arrest \(1\)](#)

[Police questioning \(2\)](#)

[Testimony before the judge \(3\)](#)

[Arrest \(1\)](#)

Can I be arrested? And, if so, who can arrest me, why, and for how long?

The arrest can be for as long as necessary to investigate the facts and you may be held for a maximum of 72 hours. During the arrest, a civil servant or the judge in charge of the case, will inform you of your rights and will explain to you what is happening, the crime you are accused of and the reasons for your arrest. After the arrest you will be released or you will be brought before the competent court.

How will I be arrested?

The arrest must be proportional and cause the least possible damage to your physical and moral integrity. Everything possible will be done for you not to be in contact with other detainees.

Can I ask for a lawyer and an interpreter?

Yes, you may choose a lawyer but, if you have no lawyer, a legal-aid lawyer will be assigned to your case. You can speak to him after making your statement.

Can I ask for an interpreter if I don't understand the language?

If you don't understand the language you may ask for an interpreter to assist you.

Can I contact a family member or a friend?

You may not contact anyone, but you may ask the police to call an acquaintance of yours to inform him/her that you have been arrested. They will ring whoever you want them to ring after you have been advised of your rights.

You may also ask the police or the court to see a doctor if you need one.

What happens if I am from another country?

If you are a national of another Member State, the police will notify your consulate that you have been arrested. If you are a foreigner you must be present during the investigation unless, after you have given your statement, the judge authorises you to leave. Furthermore, if the judge so decides, you may appear via video-conferencing.

What happens if I am a minor?

The police will notify your parents or guardian and the Public Prosecutor's Office of the facts. If you are a foreigner the consulate of your country will be notified of your arrest.

Can I be held in solitary confinement?

If the judge orders it, you may be held in solitary confinement. In this case, you may not speak to your family or inform anyone about your arrest. A legal aid lawyer will be appointed for you, but you may not contact him.

What happens if there is a European Arrest Warrant issued against me?

You will be informed about it and you may challenge it, although it will be difficult to prevent its enforcement. You will have to give a statement before the [National Court](#) in Madrid and you will be assisted by a lawyer and an interpreter (if you need one).

Police questioning (2)

What will happen during police questioning?

The police will ask for information to find out if you have been involved in the crime. You are under no obligation to give a statement; you have the right to remain silent. If, however, you want to speak, you have the right to be heard.

Will I have the right to be assisted by a lawyer?

You have the right to choose a lawyer that you trust; otherwise, a legal-aid lawyer will be appointed for you.

Can I speak to my lawyer?

You can speak to your lawyer after you have been questioned at the police station and before and after giving your statement at the court. Sometimes the police can be present during the meeting between a detainee and his/her lawyer, until the detainee gives a statement or refuses to give a statement.

Can I have an interpreter?

You may request the assistance of an interpreter if you do not understand the language.

Am I under an obligation to make a statement?

You are under no obligation to testify or to plead guilty. If you testify you may say something that may damage you and have an adverse effect on your interests. If you want to do so, you have the right to testify before a judge.

Will whatever I say be important?

Everything you say will be important; it will be included in the police report and may be used as evidence at the trial.

Can I plead guilty to all or some of the charges before the trial?

You may plead guilty to all or some of the charges from the very first moment. Despite that, the investigation will most probably carry on so that your testimony can be verified and, if appropriate, a trial can take place. Depending on the type of penalty and offence, an accelerated trial may be held.

Can I leave the country during the investigation?

You may leave the country provided you have not been prohibited from doing so, but you will have to return whenever you are summoned.

What can they ask during the investigation?

During the investigation the authorities may ask for your fingerprints, DNA samples, hair, saliva, or other bodily fluids. You may refuse.

Can there be a body search?

Yes, there may also be a body search. You can only require that the body search should be carried out with respect.

Can my home, business premises or car be searched?

The police may search your home, business premises or car and other places of interest for the investigation, if they have a search warrant and if the court clerk keeps a record with two witnesses. If you have been arrested, your lawyer may be present. If the reason for the search is insufficient, your lawyer may appeal in writing to the judge who authorised it.

What can the consequences be?

If you have been arrested you will remain in provisional custody; if you are released, some security measures may be imposed (bail, regular appearances, withdrawal of your passport, etc.).

Testimony before the judge (3)

Will I give my statement before the judge?

You will give your testimony before the judge after you have given a statement at the police station, and within a maximum time limit of 72 hours after you were arrested. This time limit may be extended. You may give testimony any time you wish to do so.

How will I give testimony?

Your testimony will be oral and you may be assisted by an interpreter if you do not speak the language correctly.

What can the judge ask me?

The judge may ask you whatever he or she thinks fit in order to clarify the facts and to determine your involvement in the crime which you have been charged with.

You may be asked about:

- your particulars;
- your personal circumstances;
- your place of work;

if you have previously been indicted;
for what crime, before which judge or court;
what was the outcome of the procedure;
what the conviction was;
if you served the sentence;
if you can read and write;
if you know why you have been arrested and what your rights are, etc.
The questions must be clear; no leading questions are allowed.

Can I meet with my lawyer?

You can meet with your lawyer before and after giving your testimony before the judge.

Am I under obligation to tell the truth?

If you give testimony as the suspect you are not under an obligation to tell the truth.

Can I take a break during questioning?

If you are tired during your questioning, you can take a break.

Can I read my statement?

Once you have made a statement you have the right to read it.

Can I leave the country during the investigation?

Yes, provided leaving the country has not been prohibited, but you will have to return every time you are summoned.

Can I plead guilty to all or some of the charges before the trial?

You may plead guilty to all or some of the charges from the very first moment. Despite that, the investigation will carry on, to verify your testimony and, if appropriate, begin the trial. Depending on the type of penalty and offence, an accelerated trial may be held.

Can I be charged with crimes other than the initial ones?

You may not be charged with crimes other than the initial ones.

Can new charges be added?

Yes, if related offences appeared.

Can I be charged with an offence which I have already been charged with in another Member State?

Yes, if you have not been tried for this offence before.

Will I get information about the witnesses?

You will be informed of the names of the witnesses who will give evidence against you.

You will also be informed of the evidence submitted against you.

Can I be sent back to my home country?

If your legal residence is in Spain you may not be sent to your home country; you may be sent back to your country only if you have entered Spain illegally.

Will I be arrested?

You will be arrested if there is a risk of flight, i.e. that you might leave Spain without permission, if there is a risk that evidence will go missing, if there is a risk that the witnesses or victims will be threatened, and if there is a risk of committing a criminal offence again. You can appeal and will not be arrested if you post bail.

Related links

[Spanish Ministry of the Interior](#)

[Spanish Police](#)

[Guardia Civil](#)

[Spanish Constitution](#)

[Spanish Ministry of Justice - International Co-operation](#)

[Spanish Criminal Code](#)

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3 - My rights in court

Where will the trial be held?

The trial will normally be held in the area where the offence was committed. The court that hears the case will depend on the nature of the offence; it will be the court whose turn it is in the rotation.

Will the trial be public?

The trial is, in general, public, unless it could be morally damaging, it could have an effect on public order or it could affect the victim or respect for the victim's family.

Who will decide the case? A judge? A jury?

A judge or a court with three sitting judges will deliver judgment, depending on the offence or the conviction sought. A jury only hands down a verdict on innocence or guilt.

Can the charges be changed during the trial?

Exceptionally, the charges can be changed, but only if there is a mistake in the specification of charges.

What happens if I plead guilty to some or all of the charges during the trial?

If you plead guilty during the trial, the procedure will carry on to verify if you actually committed the crime you are charged with.

Will I be assisted by a lawyer during the trial?

You have the right to be assisted by a lawyer of your choice or by a legal-aid lawyer. If you do not like your lawyer, you may ask to be assisted by another lawyer.

Will I have the right to be assisted by an interpreter?

You have the right to be assisted by an interpreter if you do not understand the language.

Will I have to be present at the trial?

If the penalty for the offence in question is less than a two-year prison sentence, you will not have to be present at the trial.

If the penalty for the offence is more than a two-year term of imprisonment, you will have to be present at the trial.

If you are the suspect, you may not appear by way of video conference, even if you live in another Member State.

Will I have to speak at the trial?

You may speak at the trial only if you are asked a question. But, remember, you have the right to remain silent, to refuse to give testimony and not to plead guilty.

What are the consequences if I don't tell the truth during the trial?

You have the right to remain silent, not to give testimony and not to plead guilty to the crime you have been charged with and not to incriminate yourself. You also have the right to be considered innocent until proven guilty.

What are my rights in relation to the evidence against me?

You have the right to challenge the evidence which is produced against you. Your lawyer will do that when he decides it is necessary.

What kind of evidence can I produce on my behalf?

You may produce all the evidence that you believe is necessary. You may produce the evidence, but the judge will decide if the evidence is admitted or rejected.

Can I use a private detective to obtain evidence for me?

If you believe it is necessary, you can use private detectives to obtain evidence; their reports are admissible as evidence.

Can I ask witnesses to speak for me?

The lawyer will request the admission of witnesses to speak for you. Your lawyer can also question the other witnesses and challenge what they say.

Will information about my criminal record be taken into account?

Yes, your criminal record and previous convictions will be taken into account as aggravating circumstances, both at the pre-trial phase and when judgment is delivered.

Previous convictions in another Member State will be taken into consideration depending on the crime committed.

What happens at the end of the trial?

At the end of the trial, the judge will deliver judgment. The verdict can be not guilty (no culpability) or conviction (you will be found guilty of committing the crime and, if appropriate, the penalty will be decided).

What are the possible outcomes of the trial?

The sentences may be:

imprisonment with a suspension of the sentence, if it is the first conviction and the sentence is less than two years;

a fine;

day -fines (X Euros times X amount of days. If you fail to pay the fine, you will have to serve one day of imprisonment for every two days of fine which is unpaid);

community work;

disqualification from driving;

non-molestation order;

prohibition against carrying weapons;

disqualification from holding public employment or office;

prohibition against living in or visiting certain places, etc.

What is the role of the victim during the trial?

The victim is considered as a witness for the prosecution and will give testimony during the pre-trial stage and during the trial.

Related links

[Spanish Criminal Code](#)

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4 - My rights after the court makes its decision

Can I appeal against the decision at the trial?

Yes, if you disagree with the judicial decision your lawyer may file an appeal.

Can I appeal against the sentence?

Yes, if you consider that the sentence is unfair, you may appeal against it.

How?

You must appeal file and appeal with a Higher Court, which will hear the case.

What time limits apply?

The time limits vary depending on the procedure. It could be five or ten days.

What are the grounds of appeal?

The grounds that may give rise to the remedy of appeal are the following:

Infringement of fundamental rights, possible lack of proper defence

Breach of rules

Violation of procedural rules

Mistake in weighing up the evidence

Infringement of the presumption of innocence

What happens if I appeal?

If you file an appeal against the decision, the judge may or may not change. The court of appeal may ratify the first decision or change it.

What happens if I am in prison when I appeal?

If you are in prison when you appeal, you must remain in prison for a maximum period of half of the sentence which you are appealing against .

How long will it be before the appeal is heard?

There is no specified time limit.

Can I produce new evidence for the appeal?

In certain cases, yes, you can. Evidence that is relevant to the outcome of the case, which you did not know about until after the trial, or that had not been taken before, may be produced.

What happens at the appeal hearing?

At the appeal hearing only the sentence being appealed will be discussed. You must bear in mind that it is not a second trial.

What can the court decide?

The court of appeal may decide to reverse, uphold, or deliver a new judgment which is different from the judgment which you appealed against.

What happens if the appeal is successful or unsuccessful?

The judgment will be final whether the appeal is successful or not.

If the appeal is successful the decision of the court in the new judgement will apply, if it accepts totally or in part the arguments made by your lawyer.

If the appeal is not successful, what the court of appeal decides will apply, whether it confirms the previous judgment or it modifies it.

Is there a right to appeal again to a higher/different court?

Yes, you can appeal to the Constitutional Court or to the European Court of Human Rights if your fundamental rights have been infringed.

If the first decision was overturned, will I get any compensation?

In principle, no. However if you wish to do so, you may claim compensation before the contentious-administrative court.

If my appeal is successful, will a record be kept of the conviction?

If the appeal is successful, no record will be kept of the conviction nor will the criminal record for this offence count.

Is further appeal possible if the first appeal fails?

You may exceptionally appeal at a review trial before the [Supreme Court](#), if new or previously unknown facts come to light.

When is the conviction final?

When no further appeal is possible.

I am from another Member State. Can I be sent back there after the trial?

In principle, you will not be sent back to your country. If the conviction is for less than 6 years, it may be replaced with deportation; you may serve the sentence in your home country.

Is transfer automatic?

No, you should request the transfer.

If I am convicted, can I be tried again for the same crime?

No, you cannot be tried twice for the same crime under any circumstances.

Can I be tried in another Member State for the same crime?

No, you cannot be tried twice for the same crime under any circumstances.

Will information about the charges and/or conviction be added to my criminal records?

If the outcome of the appeal is a conviction in which you are considered the offender, this information will be added to your criminal record.

How and where will that information be held?

The information will be recorded in the [Central Register of Convicted Offenders](#).

How long will it be held?

Until it is cleared, depending on the duration of the penalty.

Can it be held without my consent?

The information will automatically be held without your consent.

Can I object to the holding of the information?

You may not object to the holding of the information.

What are my rights if I am sent to prison?

You have the right to:

life;

not to be discriminated against on account of race, sex, religion, opinion, nationality or any other personal condition;

right for your wellbeing to be safeguarded by the government;

respect for your physical and moral integrity;

respect for your dignity and privacy;

to keep in contact with your family and friends;

to be visited (if appropriate);

to work and be paid for your work;

to take part in the activities of the prison;

to receive benefits for good conduct;

to make claims or complaints and to receive information on your prison and procedural situation.

What are my obligations?

You are under obligation to remain in prison at least until otherwise notified, to comply with the rules and instructions, to actively co-operate in prison co-existence, respect inmates and authorities, appropriately use the prison premises, wash yourself and dress properly, and to take part in the activities organised at the prison.

If I fall ill, can I go to hospital?

Yes, if necessary, you will be transferred to a health care centre.

When will I be released?

When the Court that convicted you or the Penitentiary Judge so decides.

Will I receive financial aid?

If you lack financial resources when you come out of prison, the Government will supply you with some money to go home and will pay for your initial expenses. You are also entitled to unemployment benefit.

Related links

[Spanish Criminal Code](#)

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5 - Road traffic offences

If the offence committed is subject to an administrative penalty it will be heard at administrative proceedings, which commence when a police officer reports that a person may have infringed the Traffic Law.

If a fine is paid on the spot, with a discount, the procedure is closed then; otherwise, it carries on with a report. This report may give rise to a sanction or not. This document must be signed to acknowledge receipt, although the person may refuse to sign it.

It will include the vehicle's registration, the ID of the subject of the report and the facts. The report will be notified to the alleged offender (in person, by post, through public notices, or through the consulate), indicating the offence, the legal remedies, and the amount of the fine imposed.

The alleged offender has 15 days from receipt of the report to submit a response and produce evidence. If evidence is offered the examining authority may admit it or not (an appeal may be filed against this decision). A decision puts an end to the procedure (it states whether an offence has been committed and, if appropriate, a penalty must be imposed).

An appeal may be filed against the decision up to the point at which it becomes final. Appeals may be filed against decisions before administrative or judicial authorities. The decisions can only be enforced if no further appeal is available.

The fine must be paid within a time limit of 15 days from receipt of the decision imposing a sanction. If the fine remains unpaid at the expiry of the time limit, a collection procedure commences, which involves the attachment of the assets of the person on whom a fine was imposed. In this case the fine and interest for late payment will be paid.

How are speeding and parking offences dealt with?

The sanction will depend on factors such as whether it is an administrative offence, a minor offence or a criminal offence.

Who deals with such offences?

The government deals with administrative offences. Courts deal with minor offences and criminal offences.

What is the procedure?

Trial of a summary or minor offence.

What penalties can apply?

A fine will be imposed and also your driving licence may be withdrawn, you may be ordered to do community work, or to go to prison.

If the road traffic offence involved the death of a person(s), you may be sent to prison and your driving licence will be withdrawn. If you are a persistent offender or if you were driving at more than 90 km per hour (in town), 170 km/h (on the road) or 190 km/h (on the motorway) you may also be sent to prison.

Are such offences pursued against nationals of other Member States?

Yes, in exactly the same way as if they were nationals.

Can I appeal?

You can file an appeal with a Higher Court.

How are other minor offences dealt with?

The examining court deals with other minor offences.

Will these offences appear on my criminal record?

No.

Related links

[Spanish Criminal Code](#)

[Traffic law](#)

[Traffic regulations](#)

[Other rules](#)

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