



Gascón Bernabéu
ABOGADOS

**CRIMINAL
LAW
GUIDE**

UN SERVICIO DE GASCÓN BERNABÉU ABOGADOS

INTRODUCTION

This guide provides an overview of the main elements of criminal law in Spain.

We will cover the keys processes which an individual may experience when facing criminal proceedings in Spain.

- Being arrested
- Rights following arrest
- Preliminary hearing
- Conditional release
- European Arrest Warrants
- Court procedures
- How we can help



BEING ARRESTED

The arrest of an individual can take place immediately after an alleged offence has been committed and before any criminal proceedings, or during the prosecution phase or after a court sentence.

In Spain, the individual should either appear before a judge or be released from custody, within the first 72 hours following arrest.

If the detained appears before a judge then they may be sent to prison prior to trial or granted release.

RIGHTS FOLLOWING ARREST

The Police are obliged to inform the individual upon arrest of their rights. This should be done both verbally and in writing. The written notification should be provided in a language that the detained can understand.

The rights include:

- Right to remain silent
- Right to an interpreter
- Right to appoint a solicitor
- Right to be examined by Doctor
- It is not mandatory to make a statement to the Police
- Right to speak with your solicitor in private
- Right to inform family/friends of arrest
- Right to phone call to family/friend
- Right to challenge arrest
- Right to receive explanation of case

Additionally the Consulate representing country of the individual can be informed of the arrest.

The individual will receive written confirmation of the outline case against them. At this early stage, there may not be much detail beyond a brief description, date, time and location of the alleged offence.

PRELIMINARY HEARING

After 72 hours in custody, the individual either needs to be released or will appear in front of a judge.

The judge will decide whether to release the individual or detain ahead of the main court date.

The judge can deny bail in certain circumstances;

- There is a risk of non appearance at trial
- Belief that individual may tamper with evidence
- Potential interference with witnesses
- Risk of committing further offence
- Individual represents a danger to themselves or others

If the individual is held prior to the trial, the judge will have to have the belief that there is a reasonable chance of guilt.

CONDITIONAL RELEASE

An individual may be released on bail with certain conditions imposed. Conditions could be;

- To avoid contact with certain people
- Necessity to report regularly to police station or consulate
- Restriction on movement
- To undergo course of treatment (for example drug or alcohol addiction)
- Subject to payment of bail bond

Having an appointed solicitor with Power of Attorney at this stage is usually of help, particularly for individuals from outside Spain.





EUROPEAN ARREST WARRANT

The European Arrest Warrant was introduced throughout the EU in 2004.

The EAW replaced separate arrangements between individual countries and was designed to streamline and simplify the extradition procedures between all EU member states.

An EAW can be issued by an EU member state in relation to an individual in another member state, in the event that the individual is accused of an offence with a penalty of in excess of one year in prison, or if the individual has already served 4 months in prison.

The warrant can be served against an individual facing trial or already sentenced.

The procedures for processing a European Arrest Warrant are;

- European Arrest Warrant submitted electronically to resident country
- Certificate issued once EAW verified (in the UK certificate issued by National Crime Agency)
- Arrest of individual
- Initial hearing (confirmation of identity, EAW & date set for extradition hearing)
- Extradition hearing (within 21 days of arrest)
- Appeal (to be made within 7 days)
- Extradition (carried out within 10 days of judgement)

There are certain grounds to oppose the EAW;

- Double jeopardy - if the individual has already been tried for the same offence
- Statute of limitations - if the time limit has expired for the offence
- If the individual is a minor
- If the EAW is deemed to be in violation of European Convention of Human Rights

COURT PROCEDURES

“Habeas Corpus” procedure

The process is a quick procedure for an arrested individual seeking release on the grounds of questioning the legality of the detention.

A written petition is submitted requesting court to judge upon the release of the individual. The individual is either then released or returned to custody.

This procedure should take 24 hours.

Attendance

An individual who has been accused of an offence in Spain and has received confirmation of a hearing, must attend court. This applies even if the individual has appointed a solicitor and granted Power of Attorney.

If the individual does not understand Spanish, as translator will be present.

Procedure for misdemeanours

Misdemeanours are the least serious offences. The case may occur due to a denuncia or criminal complaint.

The court which oversees these type of cases is the Juzgado de Instrucción or the Juzgado de Paz.

Each party will submit a statement for the judge to consider. There may be a claim for civil liability which is a financial compensation for damages.

Abbreviated procedure

This court procedure is utilised in cases which carry a potential sentence of a maximum of 9 years.

It is imperative that individuals in these procedures have legal representation. The solicitor will receive notifications from the court.

The first stage of the process involves investigation of the alleged offence. Once this stage is complete a court hearing is scheduled if there is evidence of guilt.





The initial stage is handled by the local Juzgado de Instrucción.

If the case proceeds to trial the court will either be the Juzgado de lo penal (local criminal court) or the Audiencia Provincial (provincial court).

There will be a public prosecutor present as well as solicitors from each party.

Ordinary procedure

If the crime commands a potential sentence in excess of 9 years, then the process followed is the ordinary proceedings.

Like the abbreviated procedure, the process follows an investigation stage and a court hearing.

The stages are handled by the Juzgado de Instrucción and Audiencia Provincial respectively.

HOW WE CAN HELP

GB Abogados provide a specialist service for international clients who require legal representation in Spain.

Our bi-lingual team in our Criminal Law Department benefit from many years experience assisting foreign clients with court proceedings throughout mainland Spain, the Canary Islands and the Balearic Islands.

It is always best to make contact with a solicitor at the earliest stage of proceedings as possible.

This gives the greatest opportunity to review the case file and prepare a defence.

For clients who have returned to their home country, it is important to grant a Power of Attorney to your solicitor.

This document is provided to the court and thereafter notifications will be sent directly to the solicitor.

The Power of Attorney also provides assurance to the court that the individual is cooperating and contactable. This can often be an important factor when negotiating with the public prosecutor.

GB Abogados will take a statement from each client and any potential witnesses.

After a review of the full file from court, if the evidence against the individual is compelling, it may be advisable to attempt to negotiate terms with the public prosecutor and opposing solicitor.

In many cases, this can result in an agreement prior to the court hearing. In this situation, the individual will need to attend court, but simply to sign the agreement.

The full trial would not be necessary in this circumstance.

For cases where the individual wishes to plead not guilty or a settlement is not achievable, our solicitors will carefully prepare the defence ahead of the trial.

Following the trial the verdict will be announced. For individuals with a successful defence, they will be free to go.

It is generally the accepted rule that any sentence up to 2 years is suspended providing the individual does not have previous convictions in Spain.

It is important to point out that this is not automatic and is actually at the discretion of the judge.

In the majority of cases there will be a financial element to the sentence. This can be made up of compensation for civil liability, physical injuries, damages to property, legal fees etc.

Depending upon the amount, it may be possible to make payment in instalments. This should be applied for following formal receipt of the judgment.

Those individuals who face a prison term, have the right to apply for the sentence to be carried out in their home country.

Appeals to judgments should be made within 10 days.





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CONTACT US

If you require a free no-obligation, confidential consultation in relation to any legal matter in Spain, please don't hesitate to contact us.

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