

YOUR RIGHTS: SPANISH LAW – A GUIDE

FOREWORD

The Spanish and British systems of law can be and ‘feel’ quite different. This leaflet aims to equip you with useful facts. Some of these can sometimes be easy to forget or overlook. But small things can sometimes cause big headaches. This Guide provides an outline of areas of law that will be of interest to you, too. It does not pretend to be a comprehensive and detailed explanation of the whole of Spanish law. You can download a fuller, more detailed printable version of this Guide (including a bibliography of the laws covering the provisions referred to herein) from the ‘Library’ section at www.equalitygib.org.

The information given herein is deemed to be accurate at the date of publication. Nonetheless, you should always consult a lawyer and this Guide should not be considered a substitute for professional legal advice. Reference to male gender is understood to also include the female, whilst reference to ‘Police’ in this Guide refers generically to all the different types of Spanish police units (see below).

Felix Alvarez
Chairman

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KEY POINTS TO BEAR IN MIND

- **IDENTIFICATION**

***Yourself:** In Gibraltar or UK, you are not required to carry your personal ID at all times. If you cross over into Spain, it's easy to forget, however, that in that country, you are obliged to have your passport or other ID at *all times* – *you never know when a situation may arise!*) Failure to provide ID when asked by a policeman any time may mean you having to go to the Police Station for identification.

***Police Officers:** In Gibraltar, as in Britain, policemen can be identified by an individual number displayed prominently on their uniform – usually on their lapels. However, in Spain identification at times may be difficult. There is greater reliance on identification being provided via official accreditation that must be specifically requested or offered in given circumstances. Although Police Officers are required to identify themselves when requesting your own identification or, for instance, before searching your car, it is possible some may refuse. In this eventuality, you should note down or memorize all the details: place, time, physical appearance of the Officer(s) and so forth. They may prove useful to you later.

- **THE COURTS**

Spanish Courts and their procedures are different to British ones. As indeed also in Britain, there are different types of Court in Spain, but unless the issue is serious, the majority of cases will be heard by a local court – a 'Juzgado', which is, in effect, a Court of First Instance, presided over by a judge with a standing comparable, perhaps, to a Magistrate in the British system. Whilst hearings in the UK are led by lawyers battling each other, in the Spanish system it is the judge who leads and gathers information. In both justice systems lawyers represent each side – but their roles, and the role of judge are different.

- **POLICE**

There are three main different types of Police in Spain: National Police (Policía Nacional), Civil Guard (Guardia Civil) and Local Police (Policía Local). Each has its own style of uniform. In addition, some autonomous regions may have police corps of their own (the *Ertzaintza* in the Basque Country or the *Mossos d'Esquadra* in Catalonia, for example).

GOLDEN DO's & DON'Ts!

- **DO:** Remain calm and respectful in all situations
- **DO:** Pay attention to detail – try and remember the identification number of any individual policeman for further reference. Take note of individual characteristics and identifying information that may prove useful later.

- **DO:** Take note of time and place of any incident. Make an effort to mentally remember the details, and put down in writing at the earliest opportunity – before you forget or memory goes fuzzy. Note also the time and date when the notes were made. All this information may be useful to you later on should you need to consider further action.
- **DO:** Cooperate with requests made by the Police in the course of their duties.
- **DO:** take note of the reasons given by the Police for any intervention.
- **DO:** Contact and inform friends, relatives or a lawyer of what may be happening as soon as you see fit or are able. If you are detained: you have the right to request access to a lawyer and to a telephone call if detained by police. Make use of this right as soon as it is conceded.
- **DON'T:** Lose your nerve or Common Sense! Police are individuals. Some are friendlier and more understanding than others. Maintaining your cool will often avoid escalation of a situation.
- **DON'T:** Become violent or abusive. This will lead to complicating your situation.
- **DON'T:** Refuse to cooperate with the Police. You may incur further penalties as a result.

CAN POLICE “STOP AND SEARCH” ME?

- **Yes they can.** Their powers are very wide. They may carry out controls on roads or public places (but not people’s homes except with a Court Order – the exception to this being if they have reason to suspect a crime is being committed inside). They may do this in order to find and arrest individuals suspected of having committed an offence, in addition to collecting evidence related to the offence. Police, however, must always act within what the law provides.
- Police may search vehicles and personal items *in order to verify that forbidden or dangerous items or substances are not being carried*. Serious disobedience towards the Police, refusal or unjustified resistance to show identity documents could be considered a criminal offence with a possible penalty ranging from six months to one year imprisonment.
- Body searches may only be carried out by an Officer of your own gender, *except* in justifiable and extreme circumstances.

POLICE POWERS OF ARREST

Individuals may only be arrested when Police have justifiable cause to believe that:

- They intend to commit a criminal offence.
- They are committing a criminal offence.
- There are grounds for suspicion that the person has committed a *criminal* offence (not an administrative or civil offence).
- The person has already been found guilty of a criminal offence.
- The person has escaped from prison.
- The person stands formally accused of a major criminal offence.

- In the case of lesser offences, the individual does not have a known address.
- **Minors: Spanish law determines that anyone under the age of 14 cannot be held criminally responsible.** This leads to differences in the way minors are dealt with under Spanish law. Should a person under 14 commit a criminal offence, they *cannot* be arrested. Police may make enquiries, but the child must be returned to their family.
- However, *minors between the ages of 14 and 17* inclusive *can* be arrested. They will be judged in accordance with the provisions of the relevant law (LO 5/2000). When arrested, they have the same rights as adults. Their records are specifically protected by data protection regulations. The competent Court is the *Juzgado de Menores* (Juvenile Court). Sentencing options in the case of minors range from internment in correctional facilities and supervised release to community work. Should a minor (up to age 17) be liable to payment of damages, liability rests on the minor's parents or legal guardian(s). Upon reaching age 18, the person is no longer legally a minor and they assume full criminal responsibility.

WHAT ARE MY RIGHTS UPON ARREST?

1. You have the right to be informed as to the reasons for your arrest.
2. You have the right to remain silent, and not to declare against yourself.
3. You have the right not to plead guilty.
4. You have the right to inform a family member, friend or Consular Office about the arrest and to advise them of your whereabouts at all times.
5. You have the right to appoint your own lawyer - or you can accept the free legal assistance provided. Should you accept free legal assistance and later appoint your own lawyer, you will have to pay for the previously free legal assistance provided.
6. As a non-Spanish national, you have the right of access to an interpreter free of charge.
7. You have the right to be examined by a Forensic Doctor.
8. You have the right to be brought before a Judge within 24 hours. On being taken before a Judge, he must decide whether to i) release you unconditionally, ii) release you on bail, or iii) extend the arrest (up to a maximum of 72 hours) to complete investigations. The Judge can also order provisional imprisonment.

WHAT IF MY ARREST DOES NOT FULFILL LEGAL CONDITIONS?

Any individual who thinks that he is under *illegal* arrest or that the arrest does not fulfil all legal and constitutional formalities, has the right to initiate a procedure called *Habeas Corpus*. This is a fast track procedure which must not take longer than 24 hours. The initiation of this procedure can be requested by the arrested person, his spouse or partner, family members, their legal representatives, by the Prosecutor (Ministerio Fiscal) or by the *Defensor del Pueblo* (the Spanish Ombudsman service). In the event that the Judge determines that the arrest does not fulfill all legal formalities, it may be considered to be an illegal arrest, which is a serious criminal offence.

SPANISH COURT SYSTEM

- **IN CRIMINAL PROCEEDINGS:** The Jurisdiction will correspond to the Court of the place where the alleged offence has been committed.

Proceedings are initiated either by the affected individual(s) presenting a *denuncia* (roughly equivalent to a formal complaint or Report) or by the Prosecutor's Office ("Ministerio Fiscal") as a result of their own investigations. The report procedure can also be initiated by third parties who allege that a criminal offence has been committed by others.

SO HOW DO I FILE A *DENUNCIA*?

1. By going to the relevant Police Station and presenting a complaint or Report (*denuncia*). This is a common route. You can either take your own Spanish-language statement or present a verbal statement which will then be taken down for your approval and signature. Read it carefully before signing – take the time you need to ensure it is accurate. If your complaint involves the Police, you may feel more comfortable presenting the complaint via the local Court instead (see next item).
2. By going to the duty Court (usually the Juzgado) and presenting a verbal or written complaint or Report, as explained above. If it is late in the day, you can find out which is the Duty Court by phoning the numbers provided in the below Helpful Info section.

Note: In the *denuncia* procedure, if you have sustained physical injury, it is of vital importance you immediately have recourse to a Spanish clinic or doctor who can provide you with a Medical Report (ask for a *Parte Judicial*) verifying your injuries. It is equally important to be aware that as little time as possible should elapse between the incident reported and the presentation of the complaint. Where substantial time has passed between the incident and the *denuncia* this may count against you in Court.

WHAT HAPPENS AFTER I PRESENT A *DENUNCIA*?

All *denuncias* are considered by the Court. The Judge will decide whether to admit – or dismiss (or 'file') them. Different procedures may be set in motion, depending on the seriousness of the offence and the proceedings required:

1. ***Juicio de Faltas*:** The notion of 'falta' in Spanish law may be surprising to you. As mere illustration, you may have sustained damage or injury, but under Spanish law these may be considered to be minor. *Falta* proceedings are relatively speedy. The law does not require that the parties instruct a solicitor, although it is recommended that you appoint a lawyer. Take note that Spanish Legal Aid does not cover the assistance of your personally appointed lawyer at a *Juicio de Faltas*.

2. ***Procedimiento Abreviado***: This judicial route is geared towards the prosecution of criminal offences where a prison sentence of less than 9 years may apply. Details on the various stages for this procedure can be found in the more comprehensive version of this Guide found at our online resource www.equalitygib.org.
3. ***Procedimiento Ordinario***: These proceedings are geared towards the prosecution of serious offences with a penalty range of more than 9 years imprisonment. Consult the more comprehensive version of this Guide at www.equalitygib.org for more details.

- **IN CIVIL PROCEEDINGS: WHAT HAPPENS?**

If your case doesn't come under Criminal Law, obviously it is a Civil Law matter; and the procedures and provisions will be different to those applicable under the criminal code. A fuller explanation of this area of Spanish law can be obtained by downloading the full version of this Guide at www.equalitygib.org.

TRAFFIC & VEHICLE RELATED OFFENCES

Under Spanish law, traffic or vehicle offences can be either criminal or 'administrative'. Below are just a few of the criminal and administrative offences to be taken into account in relation to traffic and vehicle issues. Please access www.equalitygib.org for a fuller list.

CRIMINAL

- Driving at more than 60 km/h over the maximum speed allowed in urban areas.
- Driving at more than 80 km/h over the maximum speed allowed in non urban areas.
- Driving under the influence of drugs, psychotropic substances or alcohol. The breathalyser blood alcohol limit is 0.50 mg/l . In practice, drinking more than one or two small beers will exceed the limit (depending on the weight of the person and food consumed amongst other factors). Professional drivers (taxis, buses, trucks and lorries) as well as drivers with less than two years' experience must not exceed 0.30 mg/l blood alcohol content.

Depending on the seriousness of the offence, and whether there are any previous similar offences, as well as on the extent of the damage caused, the vehicle used to commit the offence may be confiscated by the Police, and a Judge may order its sale at auction.

The Police has the power to arrest individuals who have committed a criminal offence in violation of traffic security.

ADMINISTRATIVE

These offences arise from non-compliance with the Spanish Highway Code.

- Driving in the wrong direction.
- Driving a vehicle which does not comply with required technical standards.
- Ignoring stop signs, give way signs, U-turns prohibitions, and overtaking rules.
- Speeding: a full table of current fines (accurate to publication date) is available at our website.

VEHICLE LICENCES & LICENCE PLATES

As a non-resident in Spain, your nationality licence plates and driving licence are legally acceptable. It is only when you are officially resident in Spain that you will be required to exchange your plates and driving licence for the Spanish equivalents.

VEHICLES: REQUIREMENTS UNDER THE LAW

The list below is not exhaustive. It covers only those items that you are *obliged* by law to carry in your vehicle. If you would also like to know which items are considered 'recommendable' by Spanish authorities, please consult our online more comprehensive Guide:

1. Driving Licence, Log Book, Insurance Policy, Green Card
2. One spare tyre in good state of repair
3. An officially-approved night/day reflective safety jacket
4. An officially-approved safety triangle
5. If you wear glasses, you need to carry a spare set with you, If you use sunglasses but normally use prescription glasses, your sunglasses must also be prescription.

Furthermore, the RAC (Royal Automobile Club) publish useful recommendations for driving in Spain, and these can be downloaded from: <http://www.rac.co.uk/travel/driving-abroad/countries/spain>.

TRAFFIC FINES: WHAT DO I DO?

As a non-resident in Spain, Police have the right to demand payment of an on-the-spot deposit to guarantee that a fine will eventually be paid, failing which, they may confiscate the vehicle until the fine is paid. If you pay by credit card, this will stand as valid proof of payment.

If you have been fined for a traffic violation and do *not* wish to appeal because you are guilty of the offence, pay the fine as soon as possible – you may then qualify for a 50% reduction in the total amount.

WHAT DO I DO IF I'M INVOLVED IN A TRAFFIC ACCIDENT?

The first thing you have to do is try to reach an amicable agreement with the other driver involved by filling in the accident report form provided by your insurance company. This is usually included with your insurance documents. In the event you use the other driver's form, please check that you are using the correct one, which has to be folded in two, with a blue outer cover that says *Parte Europeo de Accidente*, and once opened it states at the top *Declaración Amistosa de Accidente*. Please note that it is very important to fill in all the details correctly, especially when completing the section giving details of the accident (reversing, turning to the right, overtaking, etc). Should you have any doubts, do *not* trust the other party when completing the form and contact the Police by calling the Spanish Emergency Line at 112. If you need further details on this matter, feel free to download the fuller version of this Guide at www.equalitygib.org.

HELPFUL INFO

Emergency Line: Ambulance or Police: **112**

National Police: +34 956 690619

If you need to get in touch with the Policía Nacional at the Border with Gibraltar, call the main number and ask them to pass you through.

Guardia Civil Main Station Algeciras: +34 956 587610

Local Police La Linea de la Concepción: +34 956 176000

Traffic Office at La Linea de la Concepción: +34 956 768262

Defensor del Pueblo (Andaluz): Spanish Ombudsman for Andalucía:

<http://www.defensordelpuebloandaluz.es/>

Address: C/Reyes Católicos, nº. 21 - 41001, Sevilla

Tel: +34 954 21 21 21

defensor@defensordelpuebloandaluz.es

We recommend you download and print the fuller, more detailed version of this Guide by going to the 'Library' section at: www.equalitygib.org