



YOUR RIGHTS: SPANISH LAW A GUIDE

FOREWORD

This is the more comprehensive online version of our free publication of the same name. You are welcome to copy and/or print this document for your personal use, which you should consider as complementary to the hard copy version, as some advice details contained in the hard copy may not be reflected here. If you wish to publish this Guide in media of any kind, you are likewise authorized so to do so long as it is accompanied by the usual courtesy acknowledgment. Another way this version differs from the paper publication, is that – other than our logo - it contains no graphics; nor does it follow the headers or format of the published leaflet. It is, however, a much more detailed Guide to important aspects of Spanish law that may be of interest to you, being the professional legal opinion provided for the hard copy publication. As such, it methodically provides you with specific references as to the laws in question in the Bibliography at the end. Nonetheless, it does not pretend to be a comprehensive and detailed explanation of the *whole* of Spanish law.

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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POLICE: GENERAL INFORMATION

In Spain there are three different Security Units: National Police, Civil Guard and Local Police.

Local Police acts within municipalities. Their main functions are supervising and managing the traffic issues within the municipality, surveillance, prevention of minor offenses, issue of police reports arising from traffic accidents and imposing fines.

National Police deals with major offences and their area of jurisdiction is limited to cities which have a National Police Station. National Police issue ID cards and deal with passport controls at airports and frontiers.

Civil Guard will carry out the work of the National Police and/or Municipal Police in towns where these do not have a Police Station. Civil Guard also has Traffic Units, Customs Units, Sea Units, Forest Units, among others.

Whenever we refer to the “Police” in this leaflet we will be referring to either National Police, Civil Guard or Local Police in their respective areas of jurisdiction.

1. POLICE POWERS OF “STOP AND SEARCH”

Police can carry out controls on roads or public places in order to find and arrest individuals suspected of having committed an offence as well as to collect evidence related to such offence. For this purpose, they have the power to ask for the identity of individuals, and search vehicles and personal items in order to check out that they are not carrying forbidden or dangerous items or substances¹. We can only be searched by an agent of our own gender, unless there is a situation of extreme urgency.

Within their powers of investigation and prevention, Police can require the identification of any individual, if necessary for the exercise of their duties. Having said this, the notion of “necessary for the exercise of their duties” is quite an ambiguous concept. For this reason, whenever we are required to identify ourselves, it is highly advisable to provide the agent with our ID card or passport. Not being able to provide the agents with our identification documents will allow the Police to ask us to attend the Police Station for the sole purpose of checking our identity and for the minimum period of time as possible. At the Police Station there must be a Registry Book stating all identification records, reasons and time required for the interview. The Courts may request sight of this Registry Book². Serious disobedience towards the Police, refusal or unjustified resistance to show identity documents could be considered a criminal offence. As a criminal offence, the penalty could range between six months and one year imprisonment³.

If you think that you are unfairly or disrespectfully treated, you may call another Police Unit or report the unfair or disrespectful behavior to the Court. Although the Police

Agents must identify themselves when requesting your identification or the search of your car, it is quite possible that they will refuse to provide you with such details. In this event, you should note down or memorize all the details: place, time, physical appearance of the agent and so forth.

Disobedience to the requests made by the Police, when not considered a criminal offence, will be considered as an administrative offence⁴. The fine imposed for such offence could be up to 300.52€.

2. POLICE POWERS OF ARREST

Individuals can only be arrested⁵:

1. When intending to commit a criminal offence.
2. While committing a criminal offence.
3. On suspicion of having committed a criminal offence (not an administrative or civil offence).
4. After running away from prison.
5. After being found guilty of a criminal offence..
6. If being accused of a major criminal offence.
7. In case of lesser offences, only in the event that the individual does not have a known address.
8. **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.
9. 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

Once a person has been arrested, he should be brought before a Judge within 24 hours from the arrest. The Judge will decide whether to release the person, to release him with bail conditions, to continue with the arrest to allow all preliminary searches (with a maximum of 72 hours) or to order his provisional imprisonment⁶.

The general rights and legal guarantees of the arrested individuals are⁷:

1. To keep silent, not to declare against oneself and not to plead guilty.
2. To inform a family member, friend or Consular Office about the arrest and place where the arrested person is at all moments.
3. To appoint a private solicitor or to receive free legal assistance. You have to bear in mind that in case you receive legal assistance and you later change your mind and appoint a private solicitor, you will have to pay the legal assistance fees incurred.
4. The foreigner has the legal right of getting a free interpreter.
5. To be checked by a Forensic Doctor
6. The reasons of the arrests and the offence that the person has presumably committed must be communicated to the arrested person.

Any individual who thinks that he is under illegal arrest or that the arrest does not fulfill all legal and constitutional formalities, has the right to initiate the procedure called “Habeas Corpus”. This is a quick 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, legal representatives, by the Prosecutor (Ministerio Fiscal) or by the “Defensor del Pueblo”. In the event that the Judge determines that the arrest does not fulfill all legal formalities, it may be considered as an illegal arrest, which is a serious criminal offence⁸.

3. THE SPANISH COURT SYSTEM. THE DIFFERENCE BETWEEN THE SPANISH AND BRITISH SYSTEMS

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

Criminal proceedings will be initiated by a “denuncia” or by investigations carried out by the Prosecutor’s Office (“Ministerio Fiscal”).

“Denuncias” can be submitted⁹:

1. By the Police (as a result of their own investigations, or as a result of the statements made by any individual at the Police Station).
2. Verbally or in writing at the Court on duty, by any individual who knows that a criminal offence has been committed or by a person affected by such offence.

All “denuncias” will be studied by the Court. The Judge will decide whether to refuse the case, to entertain it or to initiate the same. There are different procedures dependent on the seriousness of the offence and the proceedings required in order to investigate the case:

1. “Juicio de Faltas”¹⁰. These proceedings are very quick and do not require many legal formalities. These proceedings only prosecute minor criminal offence cases. Pertinent legislation does not require that the parties instruct a solicitor, although

- it is highly recommended that a lawyer is appointed. Legal aid does not cover the assistance of a lawyer at a “Juicio de Faltas”.
2. “Procedimiento Abreviado”¹¹: This proceeding is geared towards the prosecution of criminal offences that could be punished with imprisonment for less than 9 years. The stages of these proceedings are:
 - A) “Diligencias Previas” (Investigation Stage): This stage will be performed by the Court (“Juzgado de Instrucción”) of the place where the criminal offence has been committed. The aim of such investigative stage is to determine the type of offence, the circumstances under which the offence has been committed, persons involved and the jurisdiction of the Court. At this stage, the accused must provide a Spanish address for notifications or appoint a Court Representative. If necessary, the Judge could order the provisional imprisonment of the accused.
 - B) Stage of preparation of the hearing: At this stage the so-called “*escrito de acusación*” is submitted by the Prosecutor and by the affected party. The accused, through his lawyer, must submit the so-called “*escrito de defensa*”. Then, the Court will set down a date for the hearing.
 - C) The hearing: The hearing will take place at Criminal Court (“Juzgado de lo Penal”) in the event of offences with a penalty range up to 5 years of imprisonment. In the event of offences with a penalty range from 5 to 9 years imprisonment, the hearing will take place at the Provincial Superior Court (“Audiencia Provincial”).
 3. “Procedimiento Ordinario”: These proceedings are geared towards the prosecution of serious offences with a penalty range of more than 9 years of imprisonment. It also has three stages, very similar to the ones of the “Procedimiento Abreviado”. The investigation stage is carried out by the “Juzgado de Instrucción” of the place where the alleged criminal offence was committed and the hearing will take place at the Provincial Superior Court (“Audiencia Provincial”).

CIVIL PROCEEDINGS: The general rule to determine the competent Jurisdiction is the place of the domicile of the defendant. In cases related to real estate properties, the Jurisdiction will correspond to the Court of the place where the property is located.

There are two main civil proceedings:

1. “Juicio Ordinario”¹²: For claims over 6,000€. In these proceedings it is compulsory to be assisted by a lawyer and represented by a Court Representative. The procedure begins when the claimant submits his claim. Within 20 days from the date when the defendant is notified, he has to respond to the claim by submitting the relevant defence. Within the next few weeks the Court will

summon the parties to a preliminary hearing where evidence will be determined and witnesses listed. Some months later, the main hearing will take place. The party which loses the case is usually condemned to pay the legal costs of the successful party, in accordance to the “Legal Fees Guidelines” approved by the Bar Association of the place where the hearing takes place.

2. “Juicio Verbal”¹³: For claims under 6,000€. The procedure is quicker and less formal than that of the “Juicio Ordinario”. Only one hearing will take place and the parties shall attend with all evidence and witnesses. It is not compulsory to instruct a lawyer and a Court Representative for claims under 2,000€, although it is highly recommended for individuals who do not know the Spanish legal system.

There are other special proceedings. These are the most common ones:

- “Procedimiento Monitorio”¹⁴: This is a quick proceeding aimed to get the payment of outstanding bills. An application enclosing the outstanding bills shall be submitted to the Court. The Court will give the defendant a 20- day term to pay or to oppose. In case there is defence, a hearing will take place. In case there is no defence filed and payment has not been made, the claimant is entitled to enforce the payment of the outstanding debt by the embargo of the bank accounts, properties, vehicles or salaries of the defendant.

- Eviction proceedings¹⁵: A quicker procedure has recently come into force. However, although the terms and periods have been reduced, in the practice, the standard period to get the eviction order in place is in the region of six months.

- Matrimonial proceedings¹⁶: The Courts in Spain have jurisdiction to deal with Divorce and Separation of foreigners in the event that any of the spouses has his domicile in Spain. In case it is a divorce or separation by mutual consent, Spanish rules will apply. In the event of contentious divorce or separation, the applicable law for the procedure will be:

1. The law of the common nationality of both spouses
2. In case they do not have the same nationality, the applicable law will be the law of the country where the spouses currently have the common domicile.
3. If they no longer live together, the law of the place where they had their last common domicile if, at least one of the spouses still lives there.

In any event, Spanish Law will be applicable if any of the spouses is Spanish or has its domicile in Spain, if no other national law results applicable in accordance to the above mentioned rules and in the event of divorce or separation by mutual consent.

- Exequatur¹⁷: These proceedings are applicable whenever a judgment requires enforcement in Spain. In order to fulfill the requirements to be enforced in Spain the judgment has to be final, get the Hague Apostille, be translated by a sworn translator,

and it has to be a result of judicial procedures with contradiction between the parties, that is, that the defendant attended to the hearing and defended himself. These proceedings are very common when intending to register a foreign Divorce Order in Spain.

ADMINISTRATIVE- CONTENTIOUS PROCEEDINGS: If you do not agree with a decision adopted by the Government through any of its public offices (i.e. fines) you can submit the relevant appeal before the “*Juzgado de lo Contencioso- Administrativo*”.

In most of the judicial proceedings in Spain, parties must appoint a Court Representative (Procurador). This Court Representative will submit applications, receive notifications and summonses and represent the party in the proceedings. The work done by the Court representative is independent from the work done by the lawyer, who will conduct the defense and strategy of the case and will draft all applications.

4. TRAFFIC AND VEHICLE RELATED OFFENCES AND POLICE POWERS

We have to distinguish between administrative offences and criminal offences. The main **criminal offences** arising from the use of a vehicle are¹⁸:

1. Driving at more than 60 km/h over the maximum speed allowed in urban areas.
2. Driving at more than 80 km/h over the maximum speed allowed in non urban areas.
3. Driving under the influence of drugs, psychotropic substances or alcohol. The alcohol limit is 0.50 mg/l of alcohol in breathed air. In practice, drinking more than one or two small beers will exceed the limit (depending on the weight of the person, on the food he/she may have eaten and other pertinent factors). Professionals (taxi, bus, lorry drivers...) as well as drivers with less than two years' experience must not exceed 0.30 mg/l of alcohol in breathed air.
4. Driving dangerously jeopardizing the life of other drivers
5. Causing a traffic accident as a result of any of the behaviors above mentioned.
6. Refusing to pass the alcohol test after being requested by a Police Agent.
7. Driving a car or motorbike without driving license.
8. Removing traffic signs, spilling slippery substances on the road or putting obstacles on the road.

Depending on the seriousness of the offence, the re-occurrence and the extent of the damage caused, the vehicle used to commit the offence may be confiscated by the Police and the Judge could order the public sale of the same¹⁹.

Police has power to arrest individuals who have committed a criminal offence against traffic security.

With regard to the administrative offences arising from the use of a vehicle, these result from the non compliance with the Spanish Highway Code. We may mention, among others, the following:

Very serious offences²⁰:

1. Driving in the opposite direction.
2. Running non- authorized car races.
3. Driving vehicles with devices which inhibit radars.
4. Not providing Traffic Authorities with the details of the driver of the car when a car has been use to commit an offence.
5. Driving a vehicle which does not fulfill the relevant technical requirements.

Penalty: Up to 500€

Serious offences²¹:

1. Ignoring stop signs, give way signs, U-turns prohibitions, overtaking rules.
2. Stopping or park at a bus stop, disabled parking spaces, at curves or gradient changes, tunnels or any other dangerous place.
3. Driving without headlights.
4. Using headphones, GPS navigators or mobile phones while driving.
5. Not using safety bells, helmets or whichever special system for children.
6. Taking children under 12 years on a motorbike or motorcycle.
7. Disregarding the traffic signs made by Police Agents.
8. Disregarding the red light at a traffic light.
9. Driving a vehicle without the relevant administrative authorization.
10. Negligent driving.
11. Throwing cigarette butts or other objects from a vehicle on to the road.
12. Disregarding the safe stopping distance
13. Using plates that cannot be correctly seen.
14. Not providing Police Agents with the details of your vehicle and personal identity when being involved in a traffic accident.
15. Driving vehicles with load incorrectly placed or with a risk of falling down.
16. Exceeding the number of authorized passengers in the vehicle.
17. Allowing a third person to drive one's car if this person is not in possession of his driving license.

18. Driving on highways vehicles which are not considered highway-worthy such as bikes or motorcycles under 50CV.

Penalty: Up to 200€

Minor traffic offences²²:

Any other breach of the regulations contained in the Highway Code which does not constitute a serious or a very serious offence will be considered a minor traffic offence.

Penalty: Up to 100€

Speeding fines²³:

The seriousness of the traffic offence and the amount of the fines imposed for speeding depends of the number of km/h that has exceeded the speed limit.

	Speed Limit	30	40	50	60	70	80	90	100	110	120	Fine	Points
Excessive Speed	Serious Offence	31	41	51	61	71	81	91	101	111	121	100	–
		50	60	70	90	100	110	120	130	140	150		
	Very serious Offence	51	61	71	91	101	111	121	131	141	151	300	2
		60	70	80	110	120	130	140	150	160	170		
		61	71	81	111	121	131	141	151	161	171	400	4
		70	80	90	120	130	140	150	160	170	180		
Very serious Offence	71	81	91	121	131	141	151	161	171	181	500	6	
	80	90	100	130	140	150	160	170	180	190			
	Very serious Offence	81	91	101	131	141	151	161	171	181	191	600	6

Special rules for Non- residents:

In the event that the traffic offence is committed by a foreigner who cannot provide an address in Spain, Police Agents have the right of requesting the payment of a deposit on the spot to guarantee that the fine will be paid, failing which, they will confiscate the car until the fine is paid.

Spanish residents must get Spanish plates for their British or Gibraltarian vehicles. The British or Gibraltarian driving license must be changed to a Spanish one as well. The non fulfillment of these requirements will allow Police to impose the relevant fine.

5. ADVICE AND RECOMMENDATIONS FOR STEPS TO BE TAKEN BY INDIVIDUALS BEFORE SPANISH LAW AND ENFORCEMENT OFFICERS

We wish to insist that you should act in a sensible way when being required by Police Agents to show your identification documents, vehicle documents or having your vehicle searched. Although you have the right of knowing the reason for the search, Police Agents seldom provide this information. Initiating an argument with Enforcement Officers not only is useless but would probably end up in a “denuncia” issued by the Agents for disobedience. Bear in mind that in the event that your rights are seriously breached during the search, you will be able to report this behavior to the Court

In case you commit a traffic offence and are required to pay a deposit on the spot –to guarantee that the fine will be paid-, it is advisable to pay it by credit card, as this method constitutes evidence of having paid the fine.

If you are fined and do not wish to appeal because you have committed the traffic offence, it is advisable to pay it as soon as possible in order to get a 50% reduction in the amount of the fine.

Should you ever get involved in a traffic accident, the first thing you have to do is try to arrange an amicable agreement with the other driver involved by filling in the accident report form provided by the insurance companies which is usually included with the 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 select the correct box which explains what has happened (reversing, turning to the right, overtaking, etc). In case you have any doubt, do not trust the other party when filling the form and contact the Police by calling the Spanish emergency number 112. The Police or Guardia Civil will attend the place of the accident and will put together a report on the causes of such accident. Be clear when explaining the circumstances as the police report will be important evidence concerning responsibility for the accident.

You should also contact the emergency number immediately if anyone has been hurt in the accident. If you are not sure about the nature of the injuries you may have suffered, accept the assistance of an ambulance that will immediately assist you. Their report will be also evidence of the accident. The Hospital will send a copy of their report to the Courts and a judicial proceeding will be opened awaiting your claim.

If your car is covered by a Spanish Insurance policy, you have to remember that most Insurance policies include the option of you instructing your own solicitor and payment of your own legal costs.

You also have to be aware that even if the responsibility for the accident rests with the driver of the car you are in and you get injured in a car accident, the insurance company

of the driver (it may be your spouse, son, daughter, sibling...) will pay any compensation due to you as well as all the medical costs.

BIBLIOGRAPHY

LIST OF LEGAL CITATIONS TO WHICH THE PROVISIONS IN THIS LEAFLET REFER

1. Art. 19 of Organic Law 1/1992, of 21st of February, de Protección de la Seguridad Ciudadana, hereinafter, “LO 1/1992”.
2. Art. 20 of LO 1/1992
3. Art. 556 of Organic Law 10/1995 of 23rd of November, del Código Penal, hereinafter “Criminal Code”.
4. Art. 26 h) of LO 1/1992
5. Arts. 489-495 of the Royal Decree of 14th of September of 1882, hereinafter “Criminal Procedure Law”.
6. Arts. 496-501 of Criminal Procedure Law
7. Art. 520 of Criminal Procedure Law
8. Organic Law 6/1988, of 24th of May, of Habeas Corpus and art. 167 of the Criminal Code.
9. Arts. 259-269 of Criminal Procedure Law.
10. Arts. 962-982 of Criminal Procedure Law
11. Arts. 757-773 of Criminal Procedure Law
12. Art. 249 and arts. 399-436 of Law 1/2000, of 7th of January, hereinafter “Civil Procedure Law”.
13. Art. 250 and arts. 437-447 of Civil Procedure Law.
14. Arts. 812-818 of Civil Procedure Law.
15. Art. 22.4, art 440.3, art. 440.4 of Civil Procedure Law.
16. Arts. 769-777 of Civil Procedure Law and art. 107 of the Royal Decree of 24th of July of 1889, hereinafter “Civil Code”.
17. Arts. 951-958 of the Royal Decree of 3rd of February 1881 and Regulation CE 44/2001 of 22nd of December 2000.
18. Arts. 379-385 of the Criminal Code
19. Art. 385 Bis and Arts. 127 and 128 of the Criminal Code
20. Art. 65.5 and art. 65.6 of the Royal Legal Decree 339/1990, of 2nd of March hereinafter “Traffic and Road Safety Law”.
21. Art. 65.4 of Traffic and Road Safety Law.
22. Art. 65.3 of Traffic and Road Safety Law.
23. Fourth Annex of Traffic and Road Safety Law

7. HELPFUL INFORMATION AND CONTACTS

Frontier queue webcam:

Spanish side: There is a webcam installed by the *Port Alcaidesa Marina* at the top of *Hotel Asur* with partly view of the queue. You may access to this webcam through the website of the Port: <http://www.alcaidesamarina.com/seccion/es/webcam/104/>

Gibraltar side: <http://www.frontierqueue.gi/>

National Police Station: +34 956690619

In case you require getting in contact with nacional Police at the border, you should call the main Police Station and ask them to pass you to frontier.

Guardia Civil Main Station Algeciras: +34 956587610

Traffic Office at La Linea de la Concepción: +34 956768262

Local Police La Linea de la Concepcion: +34 956176000

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

In any event, shall you require the assistance of an ambulance or require the attendance of Police, you may also call the general emergency number 112.