
SPANISH LAW FOR FOREIGNERS

GUIDELINE ABOUT WHAT IS AN OFFENSE AND AND HOW TO PROCEED

WHAT IS A CRIME AND WHAT IS NOT?

WHEN YOU ARE IN A COUNTRY THAT IS NOT YOURS IT IS IMPORTANT TO KNOW WHICH CONDUCTS ARE A CRIME AND WHICH ONES ARE NOT. A CONDUCT THAT IN YOUR COUNTRY IS NOT A CRIME, MIGHT BE A CRIME IN SPAIN, AND VICE VERSA. COMMITTING A CRIME IN SPAIN UNDER THE FALSE ASSUMPTION THAT IN YOUR COUNTRY OF ORIGIN IS NOT A CRIME IS NOT USUALLY A MITIGATING CIRCUMSTANCE, AND YOU CAN HAVE A SERIOUS PROBLEM. THE SPANISH CRIMINAL CODE IS ONE OF THE MOST PUNITIVE AND HARSH IN EUROPE.

IN LIGHT OF THE ABOVE, AND IN ORDER TO PROVIDE INFORMATION TO FOREIGN PEOPLE THAT VISIT SPAIN AND SETTLE IN SPAIN TEMPORARILY OR PERMANENTLY, IN THE PRESENT GUIDE, SOME OF THE CONDUCTS THAT MAY NOT BE A CRIME IN OTHER WESTERN COUNTRIES AND ARE IN SPAIN ARE EXPLAINED.

I- DRIVING-RELATED CRIMES

CAN I COMMIT A CRIME FOR SPEEDING?

IN SPAIN, A MOTOR VEHICLE OR MOPED HAS TO RESPECT THE ALLOWED SPEED LIMIT. IF YOU EXCEED YOUR SPEED OVER 60 KM/H ABOVE THE ONE PERMITTED IN AN URBAN ROAD (CITY) OR 80 KM/H ABOVE THE ONE PERMITTED IN A NON-URBAN ROAD (OUT OF TOWN, IN A HIGHWAY OR A REGIONAL ROAD) YOU ARE COMMITTING A CRIME, PUNISHABLE EVEN BY IMPRISONMENT. EXAMPLE: IN SPANISH HIGHWAYS THE SPEED LIMIT IS 120 KM/H, IF YOU DRIVE AT 210 KM/H, YOU ARE COMMITTING A CRIME.

IS IT A CRIME TO DRIVE WITHOUT A SPANISH DRIVING LICENSE? WHICH DOCUMENTS DO I HAVE TO CARRY IN ORDER NOT TO COMMIT A CRIME?

DRIVING IN SPAIN A MOTOR VEHICLE (ANY KIND OF MOTOR VEHICLE) OR MOPED WITHOUT HAVING NEVER OBTAINED THE DRIVING LICENSE (EITHER SPANISH OR FOREIGN) OR PERMIT IS A CRIME PUNISHABLE EVEN BY IMPRISONMENT. IMPORTANT: IF YOU DO NOT HAVE A SPANISH OR INTERNATIONAL DRIVING LICENSE OR PERMIT, IT IS ESSENTIAL THAT YOU CARRY YOUR COUNTRY'S DRIVING LICENSE OR PERMIT WITH YOU.

IF THE POLICE ASK YOU FOR YOUR DRIVING LICENSE OR PERMIT AND YOU DO NOT CARRY IT WITH YOU, YOU CAN BE CHARGED WITH A CRIME OF DRIVING WITHOUT DRIVING WITHOUT A DRIVING LICENSE OR PERMIT, AND YOU WILL HAVE TO GO TO COURT AND PROVE THAT YOU OBTAINED IN YOUR COUNTRY.

CAN I DRIVE IF I HAVE LOST ALL THE POINTS LEGALLY ASSIGNED?

THE SPANISH DRIVING LICENSE OR PERMIT WORKS BY POINTS. IF YOU HAVE LOST ALL OF THEM AND YOU DRIVE, YOU ARE COMMITTING A CRIME. YOU ARE ALSO COMMITTING A CRIME IF YOU DRIVE AFTER A COURT ORDERED TO REMOVE YOUR DRIVING LICENSE OR PERMIT OR AFTER THE COURT ORDERED YOU NOT TO DRIVE FOR SOME TIME.

IS DRIVING AFTER ALCOHOL INTAKE ALWAYS A CRIME?

IT IS A CRIME ONLY IF YOU DRIVE A MOTOR VEHICLE OR MOPED AND THE RATE OF ALCOHOL IN EXPIRED AIR EXCEEDS 0,60 MILLIGRAMS PER LITER. IN THAT CASE, YOU ARE COMMITTING A CRIME THAT CAN BE PUNISHABLE EVEN BY IMPRISONMENT. IF THE RATE IS LOWER, YOU ARE THEN COMMITTING AN ADMINISTRATIVE INFRACTION, PUNISHABLE BY A FINE, UNLESS THE POLICE CONSIDER THAT YOUR ABILITY TO DRIVE WAS AFFECTED.

IF THE DRIVER OF A VEHICLE TESTS POSITIVE IN NARCOTIC SUBSTANCES IS ALWAYS A CRIME?

IF YOU DRIVE A MOTOR VEHICLE OR MOPED AND YOU TEST POSITIVE TO A NARCOTIC SUBSTANCE (ANY KIND OF NARCOTIC SUBSTANCE), THE POLICE WILL INFORM YOU THAT YOU ARE BEING CHARGED WITH A CRIME AGAINST ROAD SAFETY, PUNISHED EVEN BY IMPRISONMENT AND THAT YOU WILL GO TO TRIAL. WHAT IS A CRIME IS TO DRIVE UNDER THE INFLUENCE OF A NARCOTIC SUBSTANCE. THE POSITIVE RESULT IN THE POLICE CONTROL IS ENOUGH TO CHARGE SOMEONE WITH A CRIME AND TO BRING A CITIZEN TO COURT.

CAN I REFUSE TO TAKE THE ALCOHOL OR DRUG TESTS?

IF YOU ARE A DRIVER OF A VEHICLE AND YOU REFUSE EXPRESSLY OR TACITLY AND YOU DO NOT COOPERATE TO TAKE THE ALCOHOL OR DRUG TESTS, YOU ARE COMMITTING A CRIME THAT CAN BE PUNISHED WITH IMPRISONMENT OF 6 MONTHS TO 1 YEAR.

WHAT HAPPENS IF I ADD OR MODIFY ELEMENTS OF THE VEHICLE REGISTRATION PLATE?

YOU CAN COMMIT A CRIME OF FORGERY OF OFFICIAL DOCUMENTS PUNISHED BY IMPRISONMENT FROM SIX MONTHS TO THREE YEARS. NOT ONLY THE CRIME OF FORGERY IS COMMITTED BY SOMEONE THAT CHANGES THE VEHICLE REGISTRATION PLATES, BUT ALSO THE MODIFICATION, EVEN CLUMSY, WITH INSULATING TAPE OF SOME ELEMENT OF THE VEHICLE REGISTRATION PLATE, LIKE, FOR EXAMPLE, TO TURN THE LETTER "J" TO "U".

II- POSSESSION OF NARCOTIC SUBSTANCES

¿IS THE POSSESSION OF SUBSTANCES ALWAYS A CRIME?

POSSESSION IS NOT A CRIME IF IT IS FOR OWN CONSUMPTION, BUT WHEN THE FOLLOWING QUANTITIES ARE EXCEEDED, IT IS PRESUMED THAT IT IS NOT FOR CONSUMPTION AND IT IS A CRIME:

MARIJUANA: 100 GRAMS.
HASHISH: 25 GRAMS.
COCAINE: 7,5 GRAMS.
HEROINE: 3 GRAMS.
METHADONE: 1,2 GRAMS.
MDM, MDMA, MDEA: 1440 MILLIGRAMS.
AMPHETAMINE: 900 MILLIGRAMS.
LSD: 3 MILLIGRAMS.

III-GENDER VIOLENCE CRIMES

ANY KIND OF INTIMIDATORY OR DEGRADING TREATMENT TO WOMEN IS A CRIME?

ANY DEGRADING TREATMENT TO A PARTNER OR EX-PARTNER CAN BE A CRIME, INSULTS INCLUDED. IT IS NOT ONLY A CRIME THE INTIMIDATORY BEHAVIOR OR THOSE BEHAVIORS THAT CONSIST IN PHYSICAL AGGRESSION.

IS THE WOMAN'S COMPLAINT NECESSARY?

NO. IN SPAIN, IF A MAN THREATENS, MISTREATS, COERCES, INJURES OR CARRIES OUT ANY KIND OF PHYSICAL OR PSYCHICAL VIOLENCE TOWARDS HIS PARTNER OR EX-PARTNER (WOMAN) HE CAN BE ARRESTED WITHOUT THE NEED OF THE WOMEN TO FILE A COMPLAINT AGAINST HIM.

WHAT HAPPENS IN THE CASE OF HAVING A RESTRAINING ORDER?

THE JUDGE CAN ORDER IMMEDIATELY A RESTRAINING ORDER TO PROTECT THE WOMAN THAT WILL FORBID THE MAN TO APPROACH HER AND EVEN TO CONTACT HER. IF THE MAN BREAKS SUCH PROHIBITION, EVEN INDIRECTLY, FOR EXAMPLE, BY LIKING SOMETHING ON FACEBOOK, HE CAN BE COMMITTING A NEW CRIME.

IV. WEAPON POSSESSION CRIMES

IS IT FORBIDDEN TO HAVE AN SPRAY, EXTENSIBLE DEFENCE OR OTHER INSTRUMENT? WHAT CAN I HAVE AND WHAT CAN'T I?

IN SPAIN THERE ARE WEAPONS THAT ARE DIRECTLY FORBIDDEN AND ITS POSSESSION IS A CRIME, PUNISHED BY IMPRISONMENT. FOR EXAMPLE, IT IS FORBIDDEN:

FIREARMS (EVEN IF YOU HAVE A LICENSE) IF ITS MANUFACTURING FEATURES OR ORIGIN FEATURES HAVE BEEN MODIFIED.

FIREARMS SIMULATED UNDER THE APPEARANCE OF ANY OTHER OBJECT

SWORDSTICKS, DAGGERS OF ANY KIND OR A SWITCHBLADE. THEY ARE CONSIDERED AS DAGGERS THE KNIVES THAT HAVE A BLADE SHORTER THAN 11 CENTIMETERS TWO EDGES AND THAT ARE POINTY.

FIREARMS, PNEUMATIC WEAPONS OR OF ANY OTHER COMPRESSED GAS, REAL OR SIMULATED, COMBINED WITH KNIVES.

FIREARMS, PNEUMATIC WEAPONS OR OF ANY OTHER COMPRESSED GAS, REAL OR SIMULATED, COMBINED WITH KNIVES.

WIRE DEFENSES OR PLUMB, FLAIL, BRASS KNUCKLES WITH OR WITHOUT SPIKES; CATAPULTS AND IMPROVED BLOWPIPES; NUNCHUCKS AND XIRIQUETES AS WELL AS ANY OTHER INSTRUMENTS ESPECIALLY DANGEROUS FOR THE PHYSICAL INTEGRITY OF PEOPLE.

IS POSSESSING A FIREARM A CRIME?

POSSESSING A FIREARM IS NOT A CRIME IF YOU HAVE PREVIOUSLY OBTAINED A SPANISH LICENSE AND IT IS NOT A MODIFIED OR A MANIPULATED WEAPON, IN THAT CASE ITS MERE POSSESSION IS A CRIME.

HOW TO PROCEED IN CASE OF BEING ACCUSED OF A CRIME? BILL OF RIGHTS.

HOW LONG CAN I BE ARRESTED IF I HAVE BEEN ARRESTED FOR BEING A SUSPECT OF A CRIME?

IN CASE OF POLICE ARREST, ITS DURATION CANNOT EXCEED 72 HOURS. AFTER THAT, THE ARRESTED PERSON WILL APPEAR BEFORE THE JUDGE OR WILL BE RELEASED. THE JUDICIAL ARREST CAN BE EXTENDED FOR 72 MORE HOURS.

IS AN INTERPRETER PROVIDED?

YES. IT IS A POLICE OBLIGATION TO INFORM YOU IMMEDIATELY OF THE GROUNDS OF DETENTION, AS WELL AS OF YOUR RIGHTS, PROVIDING AN INTERPRETER FOR THAT, IF YOU DO NOT UNDERSTAND OR SPEAK SPANISH.

CAN I CALL SOMEONE IF I AM ARRESTED?

WHILE THE DETENTION AT THE POLICE STATION LASTS, THE ARRESTED PERSON HAS THE RIGHT TO CALL A TRUSTED PERSON. APART FROM THAT CALL, HE HAS THE RIGHT TO HAVE HIS ARREST NOTIFIED TO A RELATIVE OR TO A DESIGNATED PERSON BY THE POLICE. HE HAS ALSO THE RIGHT OF THE COMMUNICATION OF HIS ARREST TO THE CONSULATE.

DO I HAVE THE RIGHT TO A LAWYER IF I AM ARRESTED?

YOU HAVE THE RIGHT TO A LAWYER, THE LAWYER THAT YOU REQUEST AND, ON THE CONTRARY, IF YOU DO NOT REQUEST ANY LAWYER, A PUBLIC DEFENDER WILL BE APPOINTED FOR YOU. THAT LAWYER WILL BE THE SAME LAWYER BOTH AT THE POLICE STATION AND BEFORE THE COURT. YOU HAVE THE RIGHT TO TALK PRIVATELY WITH A LAWYER BEFORE THE POLICE ASK YOU ANY QUESTIONS AS WELL AS AFTERWARDS.

THE LAWYER WILL EXPLAIN TO YOU THAT YOU HAVE THE RIGHT TO BE VISITED BY A DOCTOR, THE RIGHT TO MAKE A STATEMENT, THE RIGHT NOT TO ANSWER SOME QUESTIONS. IN CASE YOU MAKE A STATEMENT, YOU HAVE THE RIGHT TO NOT DECLARE YOURSELF GUILTY AND TO NOT MAKE SELF-INCRIMINATING STATEMENTS. THE PUBLIC DEFENDER THAT ASSISTS YOU AND ADVISES YOU HAVE THE RIGHT TO CHARGE YOU HIS FEES IN CASE YOU ARE NOT GRANTED THE RIGHT TO FREE LEGAL ASSISTANCE.

WHAT HAPPENS IF AN ARRESTED PERSON IS NOT RELEASED BY THE POLICE AND IS BROUGHT TO COURT?

IN COURT, THROUGH YOUR LAWYER, IF YOU ARE ARRESTED YOU WILL ACCESS THE CASE-FILE AND YOU WILL BE ABLE TO DECIDE IF YOU WANT TO MAKE A STATEMENT BEFORE THE JUDGE. WHETHER YOU MAKE A STATEMENT OR NOT, YOU CAN BE RELEASED, WITH OR WITHOUT AN INTERIM MEASURE (FOR EXAMPLE, PASSPORT WITHDRAWAL). IF THE JUDGE DOES NOT RELEASE YOU, HE WILL ORDER YOUR PRE-TRIAL DETENTION.



IF THE JUDGE ORDERS SURVEILLANCE MEASURES CAN I COMPLY WITH THEM IN MY COUNTRY?

YES. IF THE JUDGE RELEASES YOU AND ORDERS SOME KIND OF SURVEILLANCE MEASURE (FOR EXAMPLE, TO SIGN EVERY 15 DAYS) YOU CAN REQUEST AUTHORISATION IN ORDER TO COMPLY WITH THEM IN YOUR COUNTRY, PROVIDED THAT YOUR COUNTRY OF ORIGIN IS A MEMBER STATE OF THE EUROPEAN UNION.

IN WHICH CASES PRE-TRIAL DETENTION CAN BE ORDERED?

IN SPAIN THE JUDGE CAN ORDER IMPRISONMENT IF THE CRIME YOU ARE BEING CHARGED WITH PROVIDES FOR A CUSTODIAL SENTENCE OF MORE THAN 2 YEARS AND IF THERE IS A RISK OF ESCAPING, REOFFENDING OR HIDING EVIDENCE.

HOW LONG CAN I BE IN PRE-TRIAL DETENTION IN SPAIN AWAITING TRIAL?

THE MAXIMUM TIME THAT YOU CAN BE IN PRISON WITHOUT TRIAL IN SPAIN IS 2 YEARS THAT CAN BE EXTENDED FOR TWO MORE YEARS.

IN CASE THAT I RECEIVE A SENTENCE CAN I SERVE THE SENTENCE IN MY COUNTRY OF ORIGIN OR THE COUNTRY WHERE I RESIDE?

YES. IF THE COUNTRY OF ORIGIN OR COUNTRY OF RESIDENCE IS A MEMBER STATE OF THE EUROPEAN UNION, ANY SENTENCE CAN BE SERVED THERE, IF THE JUDGE AUTHORISES IT. IN CASE THAT THE COUNTRY OF ORIGIN OR RESIDENCE IS NOT A MEMBER STATE OF THE EUROPEAN UNION, IT WILL DEPEND ON WHETHER THERE IS AN AGREEMENT WITH THAT COUNTRY AND THE SENTENCE IMPOSED.

3. HOW TO PROCEED IN CASE OF BEING THE VICTIM OF AN OFFENSE? BILL OF RIGHTS.

IF I AM THE VICTIM OF A CRIME IS IT NECESSARY TO FILE A COMPLAINT IN ORDER FOR IT TO BE PROSECUTED?

IN SPAIN MOST OF THE CRIMES ARE INVESTIGATED EVEN WHEN THE VICTIM DOES NOT FILE A COMPLAINT. IT IS JUST IN A FEW CRIMES WHERE THE COMPLAINT IS COMPULSORY IN ORDER FOR THE CRIMES TO BE INVESTIGATED, FOR EXAMPLE, IN SEXUAL RELATED CRIMES OR CRIMES AGAINST PRIVACY. HOWEVER, IT IS ADVISABLE TO IMMEDIATELY FILE A COMPLAINT.

WHERE CAN I FILE A COMPLAINT?

IN CASE YOU ARE A VICTIM OF A CRIME IN SPAIN THE COMPLAINT CAN BE FILED BEFORE THE POLICE OR THE NIGHT COURT OF THE CITY WHERE YOU ARE.

CAN I BE WITH A RELATIVE OR A TRUSTED PERSON?

YES. IF YOU ARE A VICTIM OF A CRIME, IN THE MOMENT OF TESTIFYING BOTH BEFORE THE POLICE OR BEFORE THE JUDGE, YOU CAN BE WITH A TRUSTED PERSON, AS WELL AS WITH AN INTERPRETER.

WHICH MEASURES CAN I REQUEST IF I HAVE BEEN THE VICTIM OF A CRIME?

YOU HAVE THE RIGHT TO GET THE MEDICAL AND PSYCHOLOGICAL SUPPORT THAT YOU NEED. IN CASE YOU ARE A VICTIM OF GENDER OR DOMESTIC VIOLENCE,

YOU CAN REQUEST A PROTECTION OR RESTRAINING ORDER, RESPECTIVELY, SO THAT YOUR AGGRESSOR CANNOT CONTACT OR APPROACH YOU.

CAN I HAVE INFORMATION REGARDING THE CRIMINAL PROCEEDINGS IN WHICH I AM A VICTIM?

YES. ALL VICTIMS THAT REQUEST IT WILL BE INFORMED WITHOUT UNNECESSARY DELAYS OF THE DATE, TIME AND PLACE OF THE TRIAL, AS WELL AS THE CONTENT OF THE ACCUSATION AGAINST THE OFFENDER, AND YOU WILL BE NOTIFIED OF THE RESOLUTIONS. MOREOVER, IN SPAIN THE VICTIM CAN APPEAR BEFORE THE PROCEEDINGS AND CARRY OUT THE ACCUSATION TOGETHER WITH THE PUBLIC PROSECUTOR.

IN ORDER TO DO THAT, A LAWYER AND A PROCURADOR (REPRESENTATIVE) WILL BE NEEDED.

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