

1 - My rights during the investigation

If I am a foreign national, does it affect the investigation?

In general, the status of the party under investigation as a foreign national does not affect the criminal investigation. Foreign nationals enjoy the same rights as a Spanish national under investigation, and are also granted certain specific rights, such as the right to assistance from an interpreter free of charge, where the foreign national does not understand or speak Spanish or the official language in which the proceedings are taking place. Where the foreign national is detained as part of a criminal investigation, they have a right to have their deprivation of liberty and place of detention in which they are held at any time communicated to the consular office of their country, and they also have the right to be visited by the consular authorities of their country and to communicate and correspond with them.

The foreign national status of the party under investigation may be taken into consideration when deciding on their individual situation (pre-trial detention) during the criminal proceedings, and the adoption of other measures that are less restrictive of rights, such as passport seizure or bans on leaving the national territory.

What are the stages of an investigation?

The aim of the criminal investigation is to gather evidence relating to the potential commission of a criminal offence and identify the alleged perpetrators of that crime.

There are two phases here:

- *Police*: The police investigate the facts that are known and may constitute an offence. To do this, they contact any individuals presumed to have had some participation in the events, seek material evidence, witnesses, etc.
- *Judicial* (pre-trial): If the police find indications of criminal activity and identify the parties alleged to be responsible, they send a criminal police report to the investigating judge, who initiates the corresponding criminal proceedings and, where applicable, takes the action deemed appropriate (questioning of parties under investigation and witnesses, obtaining of documents relevant to the case, entries and searches, substance analysis, etc.)

If no evidence is found that an offence has been committed or if the perpetrator is unknown, the case will be dismissed and closed.

If evidence is found that an offence has been committed, arrangements will be made to continue the proceedings by entering into the 'intermediate stage', the purpose of which is to determine whether the investigation is complete and whether it is appropriate to file charges.

After the submission, where applicable, of the relevant bill of indictment and statement of defence, the parties are summoned for the trial.

The Spanish Prosecution Service (*Ministerio Fiscal*) must be kept informed throughout the criminal investigation, and may request that the investigating judge (*Juez de Instrucción*) carry out any investigative action that it deems relevant. If it deems that there is insufficient evidence of the commission of a crime or of its perpetrators, it may request that the case be dismissed. However, if it deems that there is sufficient evidence of a crime against a person, it will file the corresponding bill of indictment upon completion of the investigation.

Evidence gathering phase / Power of investigators

The criminal police (*Policía Judicial*) is responsible for carrying out the investigative procedures required to ascertain whether the law has been broken, gather relevant evidence and identify the perpetrators of the offence. This is carried out under the control of the judge in charge of the pre-trial investigation, who must, in all cases, authorise any investigative procedures that constitute a violation of fundamental rights (entry into and search of a home, intercepting communications, etc.). The Spanish Prosecution Service (*Ministerio Fiscal*) must be kept informed throughout the criminal investigation, and may request that the investigating judge carry out any investigative action that it deems relevant.

Police custody

As a general rule, detention may not last any longer than is strictly necessary to carry out the investigations seeking to clarify the facts and under no circumstances more than 72 hours, the maximum time following which the detainee must be released or handed over to the judicial authority.

Detention may be ordered by the police, which police officers must do in the cases provided for by law. It may also be ordered by the Spanish Prosecution Service or directly by the investigating judge. In exceptional cases, detention may be carried out by private individuals, who are required to immediately present the detainee to the judicial authority.

Detention must take place in such a way as to cause minimum damage to the detainee's person, reputation and assets; those who order the detention and those responsible for carrying it out must ensure due respect for the detainee's constitutional rights to honour, privacy and personal image.

After the police have carried out the investigations seeking to clarify the facts and within the legal time frame of 72 hours, the detainee will be released or handed over to the judicial authority.

Questioning

The party under investigation will be informed of their rights and asked to provide their statement in relation to the facts under investigation. The party under investigation may remain silent and provide no statement if they wish, or may choose not to answer any of the questions asked, or may declare that they will only make their statement before the judge.

The party under investigation is free to appoint a lawyer; if they do not do so, they will be assisted by an officially appointed lawyer. They likewise have the right to meet privately with their lawyer before making their statement.

If the party under investigation is a foreign national and does not understand or speak Spanish or the official language in which the proceedings are taking place, is deaf or has a hearing impairment, or has language difficulties, they have the right to be assisted by an interpreter free of charge.

The party under investigation has the right not to make a statement against themselves.

The party under investigation may also state that they are guilty of all or any of the crimes of which they are charged from the outset. This will not stop the investigation from being continued or a trial from being held. However, depending on the type of sentence and crime, a fast-track trial may be held. In these cases, the lawyer representing the party under investigation may reach an agreement with the Spanish Prosecution Service such that a conviction is issued but with a reduction in sentence.

Pre-trial detention

Pre-trial detention may only be ordered if the investigating judge deems it appropriate, subject to a request by the Spanish Prosecution Service and/or any members of the prosecution.

In any case, the legal requirements for this must be met and the measure must seek to meet a legitimate aim (protecting the victim and/or neutralising the risks of absconding, re-offending, or destroying or concealing evidence).

What are my rights during the investigation?

Any person accused of a punishable offence may exercise their right to a defence that will appear in the proceedings once notified of their existence, for which purpose information will be provided in comprehensible and accessible language regarding the following rights:

1. The right to be informed of the actions of which they are accused and any relevant change in the subject of the investigation and charges.
2. The right to examine the proceedings in good time so as to safeguard the right to a defence and, in any case, prior to a statement being taken.
3. The right to act in the criminal proceedings to exercise their right to a defence in accordance with the law.
4. The right to freely appoint a lawyer (with the exceptions listed in the Spanish Criminal Procedural Law).
5. The right to request legal assistance free of charge, the procedure for doing so and the conditions for obtaining that assistance.
6. The right to translation and interpreting, free of charge, in accordance with the Spanish Criminal Procedural Law.
7. The right to remain silent and to provide no statement if they do not wish to do so, and not to answer any of the questions asked.
8. The right not to make a statement against themselves and not to incriminate themselves.

What is my right to an interpreter and translations?

Any person under investigation will be immediately informed, in writing, in straightforward, accessible terms and in a language that they understand, of the acts of which they are accused, as well as their rights, in particular the right to free assistance from an interpreter, in the case of a foreign national who does not understand or speak Spanish or the official language in which the proceedings are taking place, or of deaf people or people with a hearing impairment, as well as any other people with language difficulties.

During the investigation stage, this right takes the shape of the right to be assisted by an interpreter who uses a language that the person under investigation understands, throughout any proceedings during which their presence is necessary, including questioning by the police or Spanish Prosecution Service and all court hearings, and the right to use an interpreter in conversations with their lawyer which are directly related to their subsequent questioning or the taking of their statement, or which are necessary for the lodging of an appeal or for other procedural applications.

What are my rights to information and access to the case-file?

In general, you have the right to be informed of the actions of which you are accused and any relevant change in the subject of the investigation and charges. You also have the right to examine the proceedings in good time so as to safeguard the right to a defence and, in any case, prior to a statement being taken, with the legally established exceptions.

In the event that you have been detained, you will also be informed of the reasons for your detention and your rights (specifically, the right to access the parts of the proceedings that are essential for contesting the legality of the detention or deprivation of freedom).

What is my right of access to a lawyer and to have a third party informed of my situation?

You have the right to freely appoint a lawyer (with the exceptions given in the Spanish Criminal Procedural Law) and to be assisted by that lawyer without undue delay. The right to a defence includes the legal assistance of a lawyer, who you are free to appoint, or, if you do not do so, an officially appointed lawyer, with whom you may communicate and meet privately, including before providing your statement to the police, the Spanish Prosecution Service or the judicial authority (with the exceptions laid down in the Law) and who will be present for all your statements, as well as any acknowledgement, witness confrontation and event reconstruction procedures.

In the event that you are detained, you have the right to have a family member or person of your choice informed, without undue delay, of your deprivation of liberty and the place in which you are being held at any time. Foreign nationals will have the right to have the above circumstances notified to the consular office of their country.

You will likewise have the right to communicate, by telephone, without undue delay, with a third party of your choice; foreign nationals will have the right to be visited by the consular authorities of their country, and to communicate and correspond with them.

What is my right to legal aid?

You have the right to receive free legal assistance if you are a Spanish national or foreign citizen legally residing in Spain, and prove you have insufficient resources for the lawsuit, under the terms laid down in law.

The right to legal assistance free of charge includes the waiver on the fees of the solicitors and lawyers where their intervention is mandatory under law and where, even when this is not mandatory, the judge or court expressly requires this to guarantee the equal treatment of the parties in the proceedings. The aid of a lawyer is granted to the detainee, or prisoner who has not appointed a lawyer, for any police action that is not the result of ongoing judicial proceedings or in their first appearance before a judicial body, including an appearance made via judicial assistance. In the case of victims of gender-based violence, terrorism and human trafficking, as well as minors or people with an intellectual disability or a mental illness, the free legal assistance will include free advice and guidance immediately prior to filing the complaint.

v. What is important to know regarding:

Presumption of innocence

The presumption of innocence is the right of any party under investigation or accused in criminal proceedings to be treated as though they are innocent until a final judgment establishes their conviction.

The presumption of innocence has two aspects: as a rule regarding treatment and as a rule regarding judgement. As a rule regarding treatment, it states that the party under investigation must be treated as though they are innocent unless a conviction by final judgment proves otherwise. As a rule regarding judgement, the presumption of innocence produces its effects upon evaluation of the evidence as, in criminal proceedings, the judge must start from an assumption that the party under investigation is innocent, such that, in the event that the prosecution does not fully prove its charge against the party under investigation, their temporarily asserted innocence shall become final.

Right to remain silent and not to incriminate oneself

The right of the party under investigation to remain silent and not to incriminate themselves is a fundamental right of which they may avail themselves, without suffering any negative consequences as a result.

The accused's silence cannot replace the lack of sufficient prosecution evidence. That is to say that, irrespective of their statement, the prosecution must prove the existence of proof of the commission of the crime. In cases where proof exists, if, upon viewing the prosecution's evidence, the accused does not answer or does not give sufficient exculpatory explanations, their silence may be considered as corroboration of their guilt. Hence the importance that the accused is aware of the prosecution's proof before making their statement.

If there is insufficient evidence for the prosecution against the accused, their silence may not be used in place of the lack of that evidence for the prosecution.

Burden of proof

The material burden of proof lies exclusively with the prosecution and not with the defence. The presumption of innocence shifts the burden of proof to the prosecution, which is exclusively responsible for proving the facts constituting the criminal claim (the responsibility never lies with the defence). Moreover, this evidential process must be sufficient to provide the Court with evidence of the existence not only of the punishable act, but also of the criminal liability of the accused in that act.

What are the specific safeguards for children?

If the person under investigation is a minor, the pre-trial investigation of the criminal proceedings will be carried out by the Spanish Juvenile Prosecution Service (*Fiscalía de Menores*) and the trial by the Spanish Juvenile Court (*Juzgado de Menores*), as this is a court with special jurisdiction regulated in Organic Law 5/2000 of 12 January

2000 governing the criminal liability of minors. This law establishes that minors between the ages of 14 and 18 have criminal liability, but are subject to a special legal regime. Therefore, if a minor is detained, they will be handed over to the Juvenile Division of the Prosecution Service (*Secciones de Menores de la Fiscalía*) and the individuals with parental authority or guardianship or their de facto guardian will be informed of the fact and place of detention, as soon as their minority is established.

If the minor is a foreign national, their country's consulate will be informed of their detention.

What are the specific safeguards for vulnerable suspects?

Currently, the safeguards that exist for vulnerable suspects are not systematically included in Spanish legislation, and although this is provided for in the draft Code of Criminal Procedure, it has not yet entered into force.

As such, Spanish legislation includes specific safeguards for vulnerable suspects in a haphazard manner, for example the use of comprehensible and accessible language during criminal proceedings, the right to free assistance from an interpreter in the case of deaf people or people with a hearing impairment, other people with language difficulties, etc.

What are the legal time limits during the investigation?

The judicial investigation will take place within a period of no more than 12 months from the opening of the case.

If, prior to the end of this period, it is ascertained that it will not be possible to complete the investigation, the judge, of their own motion or at the request of a party, and after consulting the parties, may grant successive extensions for periods of no more than six months.

These extensions will be adopted by means of an order giving reasoned explanations of the causes that prevented the completion of the investigation within the time limit, as well as the specific actions required and their relevance to the investigation. Where applicable, a refusal to grant an extension will also be issued by means of a reasoned decision.

What are the pre-trial preparations, including alternatives to pre-trial detention and possibilities for transfer to the home state (European Supervision Order)?

Specifically, the European Supervision Order (ESO) enables a suspect or accused awaiting trial to avoid pre-trial detention by means of provisional release in their state of residence. The ESO is issued to guarantee the principle of non-discrimination on the grounds of nationality enshrined in Article 18 of the Treaty on the Functioning of the European Union, as it enables the granting of equal treatment to EU citizens suspected of having committed an offence in a Member State other than that in which they reside, as regards their individual situation while awaiting trial.

■ Last update: 29/07/2025

The national language version of this page is maintained by the respective Member State. The translations have been done by the European Commission service. Possible changes introduced in the original by the competent national authority may not be yet reflected in the translations. The European Commission accepts no responsibility or liability whatsoever with regard to any information or data contained or referred to in this document. Please refer to the legal notice to see copyright rules for the Member State responsible for this page.