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## 3 - My rights after the trial

### Do I have the right to appeal the court's decision?

Yes, judgments in criminal matters are always open to appeal. An appeal against any judgment may be brought before a higher court by means of an appeal procedure (*recurso de apelación*). Furthermore, judgments handed down by that higher court ruling on the appeal may be appealed before the Supreme Court (*Tribunal Supremo*) by means of an appeal on a point of law (*recurso de casación*) on different grounds, depending on the original proceedings in which the judgment was delivered. By way of exception, judgments issued in proceedings for minor offences may only be appealed by means of an appeal procedure [they may not be appealed on a point of law].

The deadlines for filing an appeal depend on the procedure followed and are calculated as of the notification of the date of the judgment. For example, in ordinary and summary proceedings and proceedings before a jury, the deadline will be 10 days. In the case of fast-track trials and proceedings for minor offences, that deadline will be 5 days. An appeal on a point of law must be announced within 5 days. The subsequent period for lodging that appeal is 15, 20 or 30 days, depending on the territory in which the court that delivered the judgment under appeal is based.

### What other recourse options do I have?

If you have been convicted in a trial held in absentia (in those cases where it is legally possible to hold such a trial), you have the right to appeal against the judgment, even if the deadline for doing so has expired, on the same grounds as the appeal, with the 10-day period calculated as of the date on which you became aware of the existence of the judgment.

Even if the conviction is final, you may seek to have it annulled and a new judgment handed down by means of the procedure known as the final judgment review (*recurso de revisión de sentencias firmes*) in certain cases (for example, where the conviction was based on a document or testimony subsequently declared to be false, or where two different persons have been convicted for the same offence where only one could have been the perpetrator or when a favourable judgment is delivered to the convicted person by the European Court of Human Rights).

In any event, once the appeals before the courts of law have been exhausted, if you believe there to have been a violation of any fundamental rights, you can appeal to the Constitutional Court (*Tribunal Constitucional*) by way of an action for infringement of fundamental rights and freedoms (*recurso de amparo*). Once all domestic remedies have been exhausted, you may also apply to the European Court of Human Rights.

### What are the consequences if I am sentenced?

Different types of penalties may be imposed depending on the offence committed: custodial sentences (e.g. imprisonment or permanent traceability), non-custodial sentences (e.g. driving ban or community service, always with your consent) and fines (you are required to pay a sum of money). In addition to the penalty imposed for the offence, if damages were caused, you may also be ordered to pay compensation (civil liability due to the offence that may be claimed against you in the same criminal proceedings). If you fail to pay the fine, that penalty may be replaced by a custodial sentence or community service.

#### Criminal record

The conviction will mean that you will have a criminal record, the details of which will be recorded in the Spanish Criminal Records Register (*Registro de Antecedentes Penales*). The existence of a criminal record may be taken

into account, increase the severity of the sentence if you reoffend, or prevent you from obtaining benefits while serving the sentence imposed (for example, prevention from obtaining a suspension of a prison sentence). Once you have served the sentence imposed and a set time period has passed, this record will be erased and will no longer have negative consequences for you. This time period varies, depending on the type and severity of the offence, from 6 months for minor offences to 10 years for the most severe penalties.

## Execution of sentence, transfer of prisoners, probation and alternative sanctions

Once the judgment has become final, either because the appeals against it have been exhausted or because the time limit for appeal has expired without an appeal being lodged, the judgment must be enforced, that is to say, the sentences imposed must be served. If the sentence is not served voluntarily, the judge will order the necessary measures to enforce it (for example, order the police to find you and arrest you for imprisonment, or the seizure of your property for payment of the fine).

*Suspension of the sentence:* If the sentence was a custodial sentence (imprisonment or permanent traceability in a given place, for example, your home) and if you do not have a criminal record for similar offences and the prison sentence does not exceed a particular time limit, generally two years, the judge may decide to suspend the sentence, i.e. you will not have to go to prison, provided that you do not reoffend for a set time period. If you commit another offence during that time, you may be required to serve the sentence that was previously suspended, in addition to the sentence for the new offence. If, during the period of suspension, you do not commit any offences, your original sentence will be deemed to have been served and, on expiry of the period laid down by law, your criminal record may be erased.

Sometimes, so as to order the suspension of your custodial sentence, the judge may impose other conditions that you must fulfil, for example, attending courses for drug rehabilitation or prohibiting you from going to certain places or approaching certain persons.

*Alternative penalty:* If the sentence imposed on you is a prison term of less than three months, the judge will in any event replace the prison sentence with another less onerous penalty (fine, community service or 24-hour traceability).

If you are a foreign national and the sentence imposed was a prison term of more than one year and no more than five years, the judge may order that this sentence be replaced by your expulsion from the national territory with a ban on returning for a set number of years. If the prison sentence exceeds five years, before being expelled, you will be required to serve a part of the sentence imposed by the judge and may then be expelled.

*Transfer of prisoners:* If you have been sentenced to a prison term, you have the right to serve it in a prison near your family home, unless exceptional reasons apply. Furthermore, if you are a citizen of the European Union, you can be transferred to your country to serve the sentence there. If you are a national of a third country, this will depend on whether there are international treaties that allow such a transfer.

*Probation:* If certain particularly serious offences have been committed, in addition to the penalties that apply for that offence, the convicted person may be subject to judicial supervision through compliance with any orders that the judge may impose on them (normally when a convicted person is released after serving a prison sentence). These measures are very varied, and the measure selected will depend on the severity or type of the crime committed (e.g. undergoing medical treatment or participating in sexual education training programmes, or approaching and communicating with certain persons). Failure to comply with such orders may lead to other measures being imposed and, in cases of serious or repeated breaches, you may be charged with a new offence for failing to comply with the judicial measures imposed.

Probation is different from conditional release which is what you would be entitled if you have been sentenced to a prison sentence, have already served part of that sentence and have so far shown good conduct. In such cases, the remaining prison sentence may be suspended and the person may be released and required to comply any measures imposed by the judge.

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