

File card on Alternatives to imprisonment available in Spain.
FLORENTINO-GREGORIO RUIZ YAMUZA. Senior Appeal Judge, Spain.
Libra-Onlus Alternatives to prison Final Conference. Milan, Italia, 11-12 March 2016.



FILE CARD ON ALTERNATIVES TO IMPRISONMENT AVAILBLE IN SPAIN

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Abbreviations:	AJ (LRPM)	Act on Juvenile Criminal Liability.
	Art.	Article
	CPA (LECR)	Criminal Procedural Act. (Ley de Enjuiciamiento Criminal)
	Et seq.	Et sequentes/ia. And the following
	GPA (LOGP)	General Penitentiary Act.
	PC (CP)	Penal Code (Código Penal)
	SV (EV)	Statute of the Victim

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I/ Some features of the Spanish Criminal Justice System.

Examining Judges. Sentencing Courts. Penitentiary Surveillance Courts.
Public Prosecution
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Legality Principle
Civil action brought along with criminal action.
Reforms over 2015



II Alternatives to the Judicial Track

- 1 **Mediation**
 - Juvenile. Art. 17 AJ
 - Act on Statute of the Victim. Art. 15. Restorative Justice and mediation.. *Pending to be developed via by Law.*
 - Penal Code, Art. 84.1. Condition to suspension.
 - CPA. Not mentioned.
 - Violence against women's cases. Mediation is banned.

- 2 **Opportunity principle** (Felonies. Minor offences) *Light penalties not involving deprivation of liberty (Deprivation of the right to drive motor vehicles and mopeds three months to one year. Deprivation of the right to reside in certain places or go to them for less than six mont. Prohibition of approaching and/or communicate the victim for a whole month to less than six months. Fine up to three months...)*
Art. 963 CPA. Judge→ file the case if very little seriousness and not public interest to prosecute.

III Pretrial custody (Hearing)

1 Requirements CPA 502 et seq.

- imposed .
- a. Objectively necessary, (impact this may have on the investigated, circumstances and the fact and penalty that may be imposed .
 - b. Crime punishable with a maximum of not less than two years' imprisonment, (or shorter if previous convictions)
 - c. Purposes – Secure de presence of the investigated/prosecuted (risk of fleeing)
 - Avoid concealment, alteration or destruction of relevant sources of evidence.
 - Prevent investigated taking actions against the victims
 - Avoid the risk that the investigated commits other crimes.

2 Duration

- 6 months → If related to protection of sources of evidence
- 1 year → Being the penalty foreseen for the offence allegedly committed up to 3 years
- 2 years → Being the penalty foreseen for the offence allegedly committed over 3 years.
- Extension → Up to 6 more months or 2 more years.

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→ Half of the penalty imposed. After conviction.

3 Modalities

- Prison
- Home if under illness treatment (hospital temporarily)
- Homologated rehab center

4 Release on Bail Art. 529 et seq. CPA.

5 Appearances *apud acta* Withdrawal of passport. Art. 530 CPA

IV Sentencing alternatives

1 Custodial sentences

Art. 35 PC. Custodial sentences: revisable life sentence, imprisonment, permanent location and personal liability for unpaid fine.
Duration 3 months to 20 years (Art.36.2 PC)
3 times most severe penalty. 25 to 40 years extension (Art. 76 PC)

2 Suspension (Art 80 et seq. PC).

Requeriments a. Custodial sentence not exceeding 2 years imprisonment. Execution not necessary to prevent further crimes.

Background and circumstances to be assesed

b. First time offender (reckless, minor and *non recidivism-related offences not included*)

c. Civil liabilities satisfied (effort, agreement, capacity)

d. Without any requirement if serious incurable disease

e. Up to 5 years if crime committed due to drug addition →undergoing treatment or fulfilled detoxification

Term → 2 to 5 years (sentence up to 2 years). 3 months to one year (minor penalties for unpaid fine)

3 to five years drug addition

In the very judgment (at the end of the trial)

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Conditions: Not to reoffend, restraining orders, non mol orders, community work, programmes and treatment, payment of a fine, fulfillment of mediation agreement

Revoking - Reoffending

- Failure to comply with imposed conditions

If failure is not serious enough - New prohibitions may be imposed

- Suspension period extended

Fast track and Prosecutor Decree

3 Expulsion (Art. 89 PC)

- Imprisonment sentences over a year imposed on a foreign national (5-10 years)

- Necessary legal order and confidence → 2/3 to be served in Spain

Third degree or release on parole, replaced by expulsion.

- Sentence over 5 years. Court must fix the part to be served in Spain before expulsion

- Disproportionate expulsion. *Alternatives?*

- EU citizens → Directive 2004/38

- Return to Spain within the suspension period. Suspension revoked, serving period might be reduced.

- Not applicable to trafficking of human beings and similar offences



V Enforcement alternatives

1 Enforcement Rules.

1,2,3 degrees + parole (Art. 72 GPA)

Art. 36.2 PC Duration over 5 years, 3rd degree may be deferred until half of the sentenced has been served.

Compulsory if children sex abuse, pornography and
3rd degree for illness and old people

Max. Duration, (see above)

If maximum duration rules reduce the actual sentence to half of its duration benefits may be calculated in relation to total length.

2 Parole (Art. 90 et seq. PC)

Penitentiary Surveillance Judge shall grant suspension of enforcement and parole when:

- 3rd degree
- $\frac{3}{4}$ of sentence served
- Good behavior
- Civil liability covered

It may also be granted if:

- $\frac{2}{3}$ of sentence served if activities in prison have favorably modified personal circumstances

If $\frac{1}{2}$ of sentenced served → might be advanced 90 days per year (continuous favorable activities, detox., victims' reparation programmes)

Exceptionally to:

- First time offenders, sentenced not exceeds 3 years

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- ½ served

Convicted person 70+ years or incurable illness.

Conditions might be imposed and modified.

Revoked if conditions are not met.

Revisable life sentence when 25 have been served.

3 Security measures. (Art. 95.et seq. PC)

Offence committed +forecast reveals the likelihood of further offenses.

Custodial measures → Psychiatric facility, detox center, special school

Non custodial measures → Professional disqualification, expulsion, *probation*, family custody, deprivation of rights (driving license weapons)

Might be modified, ceased, suspended depending of the dangerousness' evolution

Concurrent sentences and custodial measures, measures shall be enforced firstly

Libertad vigilada (probation/supervised release/freedom under surveillance) submission to judicial control over compliance of:
(Art. 106 PC)

:

a) Obligation to be reachable by electronic devices in continuous monitoring.

b) Obligation to report regularly to the place that the judge or court established.

c) To communicate any change of residence or place or job.

d) Prohibitions of leaving a place, approaching, communicating with certain persons, going to certain places, perform activities, follow medical treatment or training programmes. .

4 Enforcement and victims' position

Victim's right to information (Art. 7 SV) in relation to decisions on:

Initiation of criminal proceedings.

Dismissal of proceedings.

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Prison and release of the offender
Adoption or modification of personal protective measures
From judicial or prison authorities affecting individuals convicted of crimes that may imply a risk for victims
Related to execution

Victims can challenge the following decisions in relation to some special offences (Art.13 SV)

3rd degree before having served half of the sentence

Prison benefits, furloughs, 3rd degree grade and computation of time for parole

Parole

Victims are also be entitled to:

Ask to conditional release measures or rules of conduct prescribed by law they deem necessary to ensure their safety

Provide to court information relevant to execution decisions, or civil liabilities.

5 Pardon

1870 Act

Conditions

Suspension of the enforcement pending the decision

VI Juvenile

1 Measures to be imposed on juveniles (Art.7 AJ)

- a. Commitment to a closed regime youth institution, (formative, educational, employment and leisure activities).
- b. Commitment to a semi-open regime institution. Activities may be partly carried out outside the center.
- c. Commitment to an open regime institution. All the activities to be carried out outside..
- d. Therapeutic commitment (mental disorders, addictions)
- e. Outpatient treatment

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- f. Attendance at a day center (support activities, education, training, work or leisure).
- g. Week end curfew (at home or in a facility)
- h. Probation.

2. Enforcement

Commitment measures → 1st period in the center, 2nd to be held on probation.

More than just one measure can be imposed.

General Scheme of enforcement

- Minor offences → probation up to six months and others not involving deprivation of liberty
- Commitment to close regime center → felonies, less serious if violence, risk for lives and others, criminal organization
- Duration: 14-15 yrs → up to 3 years

Murder, rape and others. Commitment up to 5 years plus up to 3 years on parole

16-17 yrs. → up to 6 years

Murder, rape and others. Commitment up to 8 years plus up to 5 years on parole