

SUMMARY REPORT ON SPANISH LATEST LAW DEVELOPMENTS

The Spanish Government has approved on Friday 22nd July 2011 the Project of New Criminal Procedure Law that will substitute the venerable Criminal Procedure Law which has been in effect since 1882.

The Project of New Criminal Procedure Law is formed by 789 articles that change and resets completely the patterns and guidelines of the old procedure law.

The first and most important change is that the characteristic Inquisitive system is finally substituted by the Adversary System, and consequently, the functions of the Spanish Investigating Judge or so called Instruction Judged are strongly modified and changed into a Judge of Guarantees, that in instead of working hand by hand with the Prosecutor in finding the evidences against the defendant, is placed in a more impartial position, letting all the accusation investigation efforts to rest with the Prosecutor alone.

But in order to adequately introduce the Adversary System into the Spanish procedure Law there are, or course, additional and very important new measures prescribed such as the following ones:

- The investigation procedure is limited in time: 12 months for the normal and less complicated cases and a maximum limited of 18 months for the more complex cases, such as those concerning money laundering, tax evasion, corruption, criminal organizations and terrorism, etc.
- During the investigation phase the identity of the accused is kept secret, avoiding the so called “TV and Media punishment”, by which people which are finally acquitted

have been suffering during month public slandered by the media.

- The accused have the right to consult privately with his Lawyer before giving any statement to the Police and or Judge.
- The privilege communication between Client and Lawyer is preserved at all instances and cannot be intercepted by any means.
- The gather of biological evidences from the accused, such as blood samples, urine, etc. requires his express consent or, if denied by him, the previous approval from the Judge of Guarantees.
- The level of “probable cause” required to proceed against the accused is strongly enhanced, and therefore, the “presumption of innocence” is reinforced with the addition of the need to prove the accusation “beyond a reasonable doubt”.
- Defense Lawyers will have the right to use direct and cross examination of all witness in the same manner and extension than the Prosecutor.
- The new Criminal Procedure Law emphasizes the judgment by the Jury (Citizens Court), which was suspended during the 40 years of Dictatorship of General Franco and reintroduced in Spain in May 1995 in development of article 125 of the Spanish Democratic Constitution of 1978, after a long struggle with Judges and Prosecutors which were against it.

- The accused will be sitting side by side with his Counsel to be able to consult with him at any time of the trial.
- The accused will not be obliged to declare at trial or at any prior procedure stage, and will only do it at his free will. Not declaring cannot have any negative impact on the verdict.

ENVISAGED PROBLEM TO THE APROVAL OF THE NEW CRIMINAL PROCEDURE LAW

It should be noted that this Project of Law has been approved by the Spanish Government at the end of the Legislative cycle, when General elections have been called for next 20th November 2011. The possibilities of a change of Government from Socialist to Conservative, in view of the present economic situation of Spain, are enormous, and should that be finally confirmed this excellent piece of legal work will remain as a mere academic effort.