



SPANISH CRIMINAL PROCEEDINGS – THE DENUNCIA

Legal news from De Cotta Law

Many of you will have been living in Spain for many years now and will know the word *denuncia*. Unfortunately it is often used inaccurately and made to sound as if the person who has been denounced is guilty of a crime. A *denuncia* is a private criminal allegation against an individual, company or other legal body. A *denuncia* can also be made and served on a person by the police, guardia civil or state authority. When the allegation is made the official drawing up the document - in most cases this is the local guardia civil – will only take the denuncia where there is some prima facie or preliminary evidence that a crime has been committed.

This is important where for example a parent does not have any evidence such as a court order granting visits but wants to allege they have been deprived of contact with their children. In this type of case it is best to consult a Spanish abogado before seeking to make a private allegation.

Once the *denuncia* is made against a person or company and if the allegation is not for a grave or serious offence leading to immediate arrest it will be put before the local Judge who will consider firstly if there is a need for an urgent or preventive measure. The time this will take will vary depending on the particular court. The Judge in Spain is an investigating judge who will then call for witnesses and evidence. This is part of procedure called *diligencias previas* or preliminary investigation. Witnesses are served with a request to attend the court and evidence will be called for by the judge who is in control of all of the information. This is not an adversarial procedure and on rare occasions the whole investigation can be declared *secreto sumario* which means none of those involved will be given information on the investigation.

Once this preliminary investigation and with the advice of the *ministerio fiscal* the judge will then decide if the matter should be put before a full trial court which will be before the criminal courts or the Provincial Higher court depending on the gravity of the alleged offence. If there is not sufficient evidence that a crime has been committed the judge will archive the proceedings.

If you wish more information on this particular topic or would like to discuss any matter raised in this article, contact Sandra Wrightson or Javier Florido on 952 527014.

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