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IMPROVE JUSTICE: INQUISITORIAL OR ADVERSARY CRIMINAL
PROCEEDINGS?

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**UPDATE OF KEY DEVELOPMENTS IN SPANISH CRIMINAL PROCEDURE
RELEVANT TO PRACTITIONERS IN OTHER JURISDICTIONS.**

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I.- Introduction

2015 has been a very important year for Spanish criminal procedure. Spanish Criminal Procedure Act was seven times reformed in 2015. Four of them are -and will be- outstanding to practitioners in Spain and abroad:

1.- Organic Act 4/2015, about victims rights statutes (came into force on October, 28th 2015).

2.- Organic Act 5/2015, about right to interpretation and translation, and right to information in the criminal procedure (came into force on October, 28th 2015).

3.- Organic Act 13/2015, to strengthen procedural safeguards and technological investigation measures regulation (came into force on November, 1st 2015).

4.- Organic Act 41/2015, to streamline the Criminal Justice System and to strengthen procedural safeguards (came into force on December, 6th 2015).

II.- The most important developments to practitioners

2.1.- The person under investigation is now entitled to access to the case file before making a statement as an alleged offender. His or her Lawyer also has the same right to access. Even, in my opinion, this right extends to access to police reports.

In any case, the Lawyer is entitled to access to parts of the file (police report included) that are essential to control the legacy of the arrest, even when the case file is secret.

2.2.- Before and after to be questioned by the police or by another law enforcement or judicial authority the person under investigation has the right to request a private interview with his or her Lawyer.

This is essential and it has reinforced the effectiveness of the right to counsel. It is necessary at this point to recall the words of Mr. Justice BLACK (Supreme Court of USA), in his dissenting opinion to *In re Groban et alt.* judgment¹: “*One can imagine a cynical prosecutor saying: 'Let them have the most illustrious counsel, now. They can't escape the noose. There is nothing that counsel can do for them at the trial'.*”

2.3.- The Law provides the confidentiality of communication between suspects or accused persons and their Lawyer.

Although it was not specifically regulated before, in 2012 Judge Garzón was declared guilty by Spanish Supreme Court because he authorized the interception of interviews between suspects persons in pretrial detention and their Lawyers².

2.4.- Suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned have right to be provided with interpretation, also for communication between suspected or accused persons and their Lawyer.

Furthermore, suspected or accused persons who do not understand the language of the criminal proceedings concerned have right to be provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence. Essential documents must include any decision depriving a person of his liberty, any charge or indictment, and any judgment, but suspected or accused persons have right to submit a reasoned request of translation of any other document they think is essential.

2.4.- There is a reinforcement of the right of victims to participate in criminal proceedings, providing them:

- a) More information about their rights in the criminal proceedings.
- b) The right to enter an appearance as a party to the prosecution, bringing criminal and civil actions.
- c) The right to file an appeal against orders of dismissal with prejudice, even if the victim didn't enter an appearance as a party to the prosecution.

¹ 352 U.S. 330 (1957), footnote 19.

² Judgment 79/2012, february 9th.

III.- Overall assessment.

Finally the recent reforms deserve a positive opinion. Spanish Parliament has enacted the necessary legislation to comply with the Directives 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings; 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings; 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; and 2013/48/EU of the European Parliament and of the Council of 22 October on the right of access to a Lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.