AN EXAMINATION OF WHITE COLLAR SENTENCING REGIMES IN THE EU AND THE US

Sentencing Regime in Spain
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8th Annual London White Collar Crime Institute

Pérez-Llorca
OVERVIEW OF THE SPANISH SENTENCING REGIME

- General rule: there are no sentencing guidelines in Spain

- Case law:
  - General directions (e.g. proportionality, fairness, reasoning...)
  - Specific rules for a number of offences

- Three steps sentencing
  - Legal provisions: criminal code sets out minimum and maximum penalty corresponding to each offence
  - Prosecutorial guidelines
  - Sentencing rules, where applicable:
    - The Court must reason the sentencing process
    - Constitutional guarantee
    - Possibility to appeal

- Sentence
  - Specific sentence: determined sentence applicable to each defendant vs indeterminate sentencing systems
  - Mechanisms to moderate sentence during the execution:
    - Suspension
    - Substitution
    - Probation
## SENTENCES DETERMINED IN THREE STEPS

<table>
<thead>
<tr>
<th>Legal provisions</th>
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<tbody>
<tr>
<td>Extension range associated to each criminal offence (e.g. fraud: 1 to 6 years of imprisonment)</td>
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<tr>
<td>Legal rules to determine the extension of the sentence in the specific case:</td>
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<tr>
<td>- Participation in the offence (i.e. principal, accessory...)</td>
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<td>- Completion of the offence (i.e. offence completely executed or attempted, conspiracy...)</td>
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<td>- Aggravating or mitigating circumstances</td>
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<td>• Generic (e.g. premeditation, confession, recidivism...)</td>
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<td>• Specific (e.g. to perpetrate a fraud through forgery of a signature)</td>
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<td>- Other (e.g. multiple offences)</td>
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<thead>
<tr>
<th>Prosecutor request</th>
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<td>Consistency and fairness of the Public Prosecution action. Certainty and predictability.</td>
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<td>Prosecutorial guidelines for some offences</td>
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<td>Non-binding for the Court</td>
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<td>The Court cannot sentence above the request of the prosecutor</td>
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<th>Sentencing rules</th>
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<td>No sentencing guidelines</td>
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<td>Case law</td>
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<td>- Fraud: depending on the total amount or the number of victims</td>
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<td>- Embezzlement of public funds: depending on the total amount</td>
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TRENDS IN WHITE COLLAR CRIME

- Jail used to be rare for white collar offenders
- As a general rule, prison sentences of two years or less are suspended

Current trend
- Long jail sentences in corruption cases
- Financial crime connected with mismanagement of financial entities during the economic recession
- The most serious sentence would be in the range of 10 to 15 years imprisonment (e.g. serious Ponzi scheme with multiple victims)

Guilty pleas
- In practice, some Prosecution Offices request higher jail sentence to encourage the defendant to plead guilty
- Significant reduction of the sentence in economic crime cases if the defendant:
  - pleads guilty
  - reimburses the victim
- Court control over guilty plea

Sentencing legal entities
- Same rules apply to legal persons
- Specific mitigating circumstances
- Compliance is a cause for mitigation or exemption
EXAMPLE: TAX FRAUD CASE

- Football player on trial for four charges of serious tax fraud (14 million euros)

- Potential sentence if trial:
  - Criminal Code: two to six years of imprisonment for each charge
  - Prosecution request: minimum three years jail time for each charge. Total twelve years imprisonment.
  - Minimum sentence: six years of imprisonment. Involves actual jail time

- Guilty plea:
  - Payment of the total tax due, plus interest
  - Payment of a fine amounting to 70% of the evaded taxes
  - Mitigating circumstance: reduce the penalty for each offence in two degrees (imprisonment from 6 month to one year)
  - Final settlement: two years imprisonment suspended