

ABSTRACT EUROCRIM 2015 CONFERENCE  
Porto, September 2015

**Criminological analysis of the principle of judicial opportunity  
of the art. 57.7 of Spanish Immigration Law: Waiving of criminal  
proceedings and primacy of administrative expulsion**

*Elisa García España (Universidad de Málaga, Spain)*  
*María Contreras Román (Universidad de Málaga, Spain)*  
*y Pablo Rando Casermeiro (Universidad de Sevilla, Spain)*

Spanish Immigration Law provides (art. 57.7) that where a foreigner, on which is pending an administrative expulsion order, is accused in a penal procedure with a misdemeanour or felony which entails a punishment less than six years of imprisonment or any alternative penal sanction, administrative authority will request to the criminal judge to renounce continuing with the penal procedure and allowed the expulsion, and judge will renounce unless some circumstances will be appreciated to justify the continuation of the process.

This regulation, manifestation of the principle of judicial opportunity, has been widely analyzed from a legal perspective, but little research has been done about its effective implementation in practice and about the costs and benefits derived from this *ius puniendi's* renunciation from the point of view of the purposes of punishment.

With the overall aim of deepening the knowledge of this topic, the research we are doing aims to: 1) determine the prevalence of its application; 2) identify the profile of foreigners and offenses for which it is applied; and 3) identify which criteria are guiding the assessment of the court decision. Our hypothesis are that: i) there are some dysfunctions that hampered the application and also the knowledge of the exact number of authorizations granted and that ii) in practice, the assessment of costs and benefits that implies authorization in each case, is omitted.

To achieve the first objective we are reviewing official statistics and judiciary/prosecutors instructions and conducting interviews with key stakeholders. To achieve the second and the third objectives, we are reviewing a sample of selected case files of trial courts of Madrid and Malaga, which also allows us to make comparisons between practices of both jurisdictions. The results obtained would allow us to develop good practices that could be useful for legal actors in the assessment of approval or denial the expulsion.