

## The Right to a Fair Trial in French and Spanish Constitutional Law

**Authors :** Chloe Fauchon

**Abstract :** In Europe, the right to a fair trial is enshrined in the European Convention on Human Rights, signed in 1950, in its famous Article 6, and, in the field of the European Union, in Article 47 of the Charter of Fundamental Rights, binding since 2009. The right to a fair trial is, therefore, a fundamental right protected by all the relevant treaties. The right to a fair trial is an "umbrella right" which encompasses various sub-rights and principles. Although this right applies in all the proceedings, it gets a special relevance in criminal matters and, particularly, regarding the defendant. In criminal proceedings, the parties are not equal: the accusation is represented by a State-organ, with specific prerogatives, and the defense does not benefit from these specific powers and is often inexperienced in criminal law. Equality of arms, and consequently the right to a fair trial, needs some specific mechanisms to be effective in criminal proceedings. For instance, the defendant benefits from some procedural rights, such as the right to a lawyer, the right to be informed of the charges against them, the right to confront witnesses, and so on. These rights aim to give the defendant the tools to dispute the accusation. The role of the defense is, therefore, very important in criminal matters to avoid unjustified convictions. This specificity of criminal matters justifies that the focus will be put on them during this study. Then this paper will also focus on French and Spanish legal orders. Indeed, if the European Court and Convention on Human Rights are the most famous instruments to protect the right to a fair trial, this right is also guaranteed at a constitutional level in European national legal orders in Europe. However, this enshrinement differs from one country to the other: for instance, in Spain, the right to a fair trial is protected explicitly by the 1978 constitutional text, whereas, in France, it is more of a case-law construction. Nevertheless, this difference between both legal orders does not imply huge variations in the substantive aspect of the right to a fair trial. This can be specifically explained by the submission of both States to the European Convention on Human Rights. This work aims to show that, although the French and Spanish legal orders differ in the way they protect the right to a fair trial, this right eventually has the same substantive meaning in both legal orders.

**Keywords :** right to a fair trial, constitutional law, French law, Spanish law, European Court of Human Rights

**Conference Title :** ICCLDP 2025 : International Conference on Constitutional Law and Democratic Principles

**Conference Location :** Melbourne, Australia

**Conference Dates :** February 01-02, 2025