

Carlos López-Veraza Pérez

Criminal Law in the EU and the Right to a Fair Trial

With particular reference to international
standards and the case-law of the European
Court of Human Rights



AULAMAGNA
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Carlos López-Veraza Pérez

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editorialaulamagna.com

info@editorialaulamagna.com

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"We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our lips as well".

ROBERT H. JACKSON,
opening address to the International
Military Tribunal at the Nuremberg Trial

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Abbreviations and Acronyms

App.	Application
DRMC	Declaration of the Rights of Man and Citizen
EAW	European Arrest Warrant
ECtHR	The European Court of Human Rights
EU	European Union
ECJ	European Court of Justice
ICCPR	International Covenant on Civil and Political Rights
The Charter	The Charter of Fundamental Rights of the European Union
The Convention	The Convention for the Protection of Human Rights and Fundamental Freedoms
OHCHR	Office of the United Nations High Commissioner for Human Rights
UN	The United Nations
UNGA	The United Nations General Assembly
UNHRC	The United Nations Human Rights Committee
UDHR	The Universal Declaration of Human Rights

Introduction

There cannot be justice in the absence of a fair trial. Our Western system accepts that justice must be based on respect for human rights and democracy. The right to a fair trial has been long recognised as a fundamental human right, but it cannot be seen as a static concept. It is dynamic, it evolves, and in its development, the European Court of Human Rights has played and still plays a key role. We must also take into account that we do not have a uniform European legal system, which sometimes leads to a loss of mutual reliance between countries. There is sometimes a lack of trust among Member States in each other's criminal justice systems. Therefore, the assurance of a fair trial in every Member State of the European Union will be crucial in advancing to a closer EU.

In its beginnings, the EU (formerly the European Economic Community) was based on economic grounds, and there were no provisions related to fundamental rights. Therefore, human rights protection was only guaranteed in the Member States by their constitutional courts and the European Court of Human Rights. The Founding Treaties did not address the protection of human rights in the European Union, but the case-law of the European Court of Justice later developed this protection. However, the European institutions

were aware that the European Court of Justice could not provide real protection of human rights on its own. That circumstance led to the promulgation of the Charter of Fundamental Rights of the European Union in the year 2000. The Charter, legally binding after entering into force after the Treaty of Lisbon, brought together all the personal, civil, political, economic, and social rights enjoyed by the people within the European Union. Furthermore, the treaty required the EU to accede to the European Convention on Human Rights. A multilevel system of human-rights protection was undoubtedly configured in the Union.

The 1999 European Council in Tampere affirmed that the principle of mutual recognition of judgments and other judicial decisions must be the cornerstone of both civil and criminal cooperation. However, this cooperation is sometimes undermined by suspicion among the judiciaries about the legal systems of the other countries, which also results in a detriment of the primacy of the European Union law over national law. This survey studies the right to a fair trial in a broader vision, considering that it is the only way to assess the real situation of the fairness of litigation in the European Union, and examines if there are reasons for the mistrust among the EU Member States. The right to a fair trial is the only way to avoid miscarriages of justice and abuses of power, and it is essential in every democratic system.

This investigation presents an exhaustive overview of the right to a fair trial in the European Union. It provides an analysis of the current situation and examines if there are any deficiencies. The European system of protection is analysed to give a full picture of issues at stake, taking into consideration the existence of a system of multilevel protection.

The first chapter introduces the history of the right to a fair trial as well as its development. We find some principles in proceedings in almost every ancient society, but there is no international definition of this right, and it depends on our concept of justice.

The second chapter exposes the main principles that a fair trial must have according to international standards, and especially in