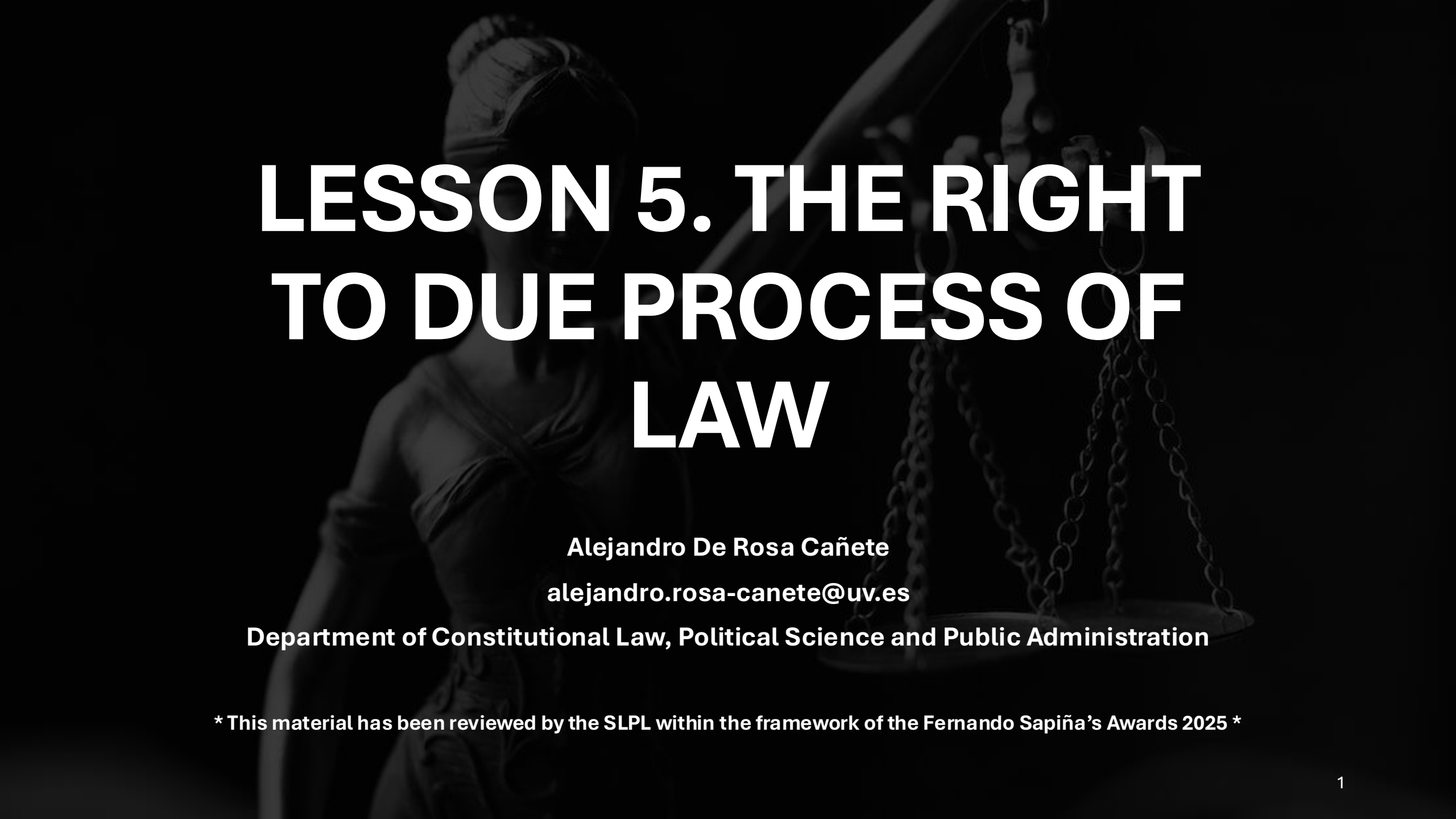


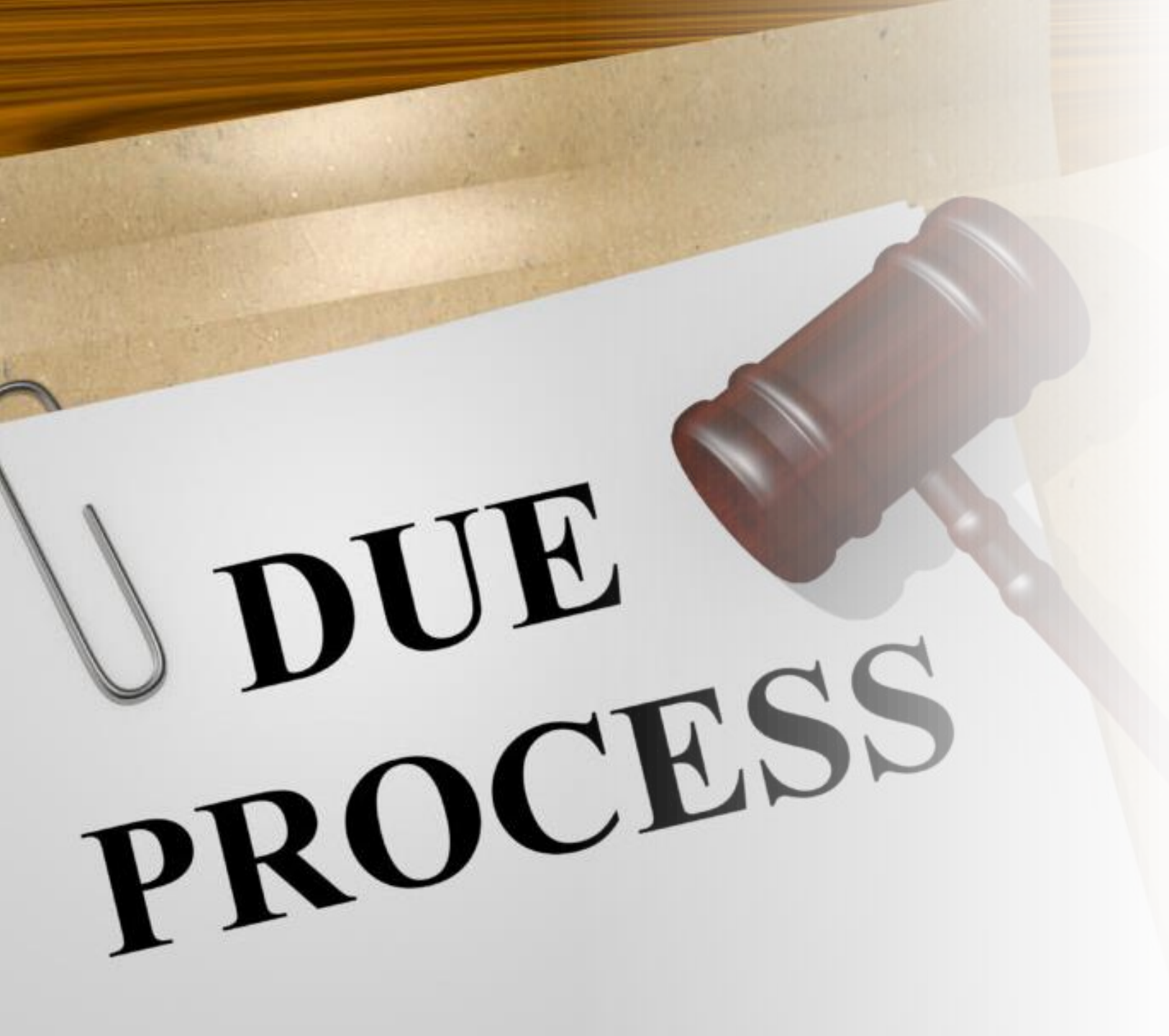


LESSON 5. THE RIGHT TO DUE PROCESS OF LAW

Alejandro De Rosa Cañete
alejandro.rosa-canete@uv.es

Department of Constitutional Law, Political Science and Public Administration

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1. INTRODUCTION AND CONTENT OF THE RIGHT TO DUE PROCESS OF LAW.

CONSTITUTIONAL PROVISIONS ON THE RIGHT TO EFFECTIVE JUDICIAL PROTECTION

- It was not until the **1978 Constitution** that the right to effective judicial protection was enshrined among the fundamental rights with the highest constitutional safeguards (**Article 24**).
- **Article 24** recognizes the right of all persons to obtain effective protection from judges and courts in the exercise of their rights and legitimate interests, ensuring that under no circumstances may they be left without a defense, since judges and courts are an essential element of the **Rule of Law**.

JUSTICE AS A FOUNDATIONAL VALUE

- The Constitution itself begins by declaring that **Spain is a State under the Rule of Law**, and upholds **justice** as one of its principle values (**Article 1.1**).
- Among the mechanisms established to protect rights and freedoms, it gives a central role to the **protection offered by judges and courts**.
- Due process before a judge constitutes one of the **primary and essential guarantees** of citizens' rights.

INTERPRETATION BY THE CONSTITUTIONAL COURT

For the **Constitutional Court**, **Article 24** implies the right of every person to access the courts and obtain a decision founded in law—even if that decision is one of inadmissibility.

This encompasses:

- The right to an **effective appeal**.
- The right to a **judgment on the merits**.
- The right to a **reasoned and legally motivated decision**.
- The right to **freedom from arbitrariness**.
- The right to a **judge predetermined by law**.
- The right **not to suffer defenselessness**.

SCOPE OF THE RIGHT

- The **right to effective judicial protection** therefore entails:
 - the ability to **initiate judicial proceedings**,
 - the guarantee of a **fair and safeguarded process**, and
 - the right to **obtain a judicial decision** on the dispute raised.

CONSTITUTIONAL COURT CASE LAW

- The extensive and generous case law developed by the **Constitutional Court** on the right to effective judicial protection, together with the requirement to **exhaust all prior judicial remedies** before filing a *recurso de amparo*¹, has made **Article 24 CE** one of the most frequently invoked provisions before the Court.
- Roughly **four out of every five appeals** allege a violation of this right.

¹Appeal for the protection of fundamental rights and public liberties

EXPANSION OF JURISDICTION

- This has led to an **expansion of the Constitutional Court's jurisdiction** into procedural matters.
- As these issues traditionally belonged to the **ordinary courts, controversies and tensions** between the **Constitutional Court** and the **Supreme Court** have arisen.

LEGAL AND PROCEDURAL NATURE

- The right to effective judicial protection is **eminently procedural** and **legally defined**.
- It can only be exercised **through the channels established by law**.

LEGISLATIVE RESPONSIBILITIES

- If the legislator fails to:
 - design the proper **judicial procedures**,
 - establish **judicial demarcation**, and
 - provide **judges, staff and material resources**,

citizens will be unable to **effectively exercise** their right to judicial protection.

OWNERSHIP OF THE RIGHT

- **Article 24 CE** states: “All persons have the right” to effective judicial protection.
- The **Constitutional Court** interprets this broadly to:
 - apply to **natural and legal persons**, and
 - include **foreigners**.

ACCESS TO CONSTITUTIONAL APPEALS

- The Constitutional Court extends this broad interpretation to **appeals for constitutional protection** (*recursos de amparo*).
- Although **Article 53 CE** and **Article 41 LOTC** mention “citizens,” access
 - cannot be limited to citizens *strictu sensu*, and
 - extends to **any person invoking a legitimate interest**.

ORGANIC LAW OF THE JUDICIARY (LOPJ)

- **Article 7.3 LOPJ:**

“Courts and Tribunals shall protect rights and legitimate interests, both individual and collective.”

- This grants **procedural standing** to:
 - any person with a **legitimate interest**, including
 - **corporations, associations, and groups** affected or pursuing a fair cause.

EUROPEAN COURT OF HUMAN RIGHTS

- The **ECHR** supports the same interpretation.
- The expression “everyone” (*todas las personas*) means:
“all those who have the capacity to be a party in legal proceedings.”
- Case: **Buchholz v. Germany**, 6 May 1981.

EFFECTIVE JUDICIAL PROTECTION: INTERPRETATION AND SCOPE

- When the Constitution says “effective” protection, it means that justice should not just exist *on paper* or follow empty formal rules: it must **really work in practice**. In other words, people must actually be protected **in real life (*de facto*)**, not just theoretically.
- Therefore, **excessive formal requirements** should not be imposed in procedural law that could deprive interested parties of the **right to have their interests protected** in court.



TRIBUNAL SUPREMO

2. ACCESS TO THE JUDICIAL SYSTEM.



2.1. THE RIGHT TO AN ORDINARY JUDGE PREDETERMINED BY LAW



THE RIGHT TO AN ORDINARY JUDGE PREDETERMINED BY LAW

- The Constitution establishes, as a **fundamental guarantee**, the **right to an ordinary judge predetermined by law**.
- **Three requirements** derive from this right:
 1. The judicial body must belong to the **Judicial Power**.
 2. It must be a **court of ordinary jurisdiction**.
 3. It must be **predetermined by law**.

ORDINARY JURISDICTION AND EXCEPTIONS

1. Judgments must be issued by a **body of the Judicial Power**—either a single judge or a collegial court.
2. The court must belong to the **ordinary judiciary, not to:**
 - **special courts**, which are prohibited by *Article 117.6 CE*.
 - **military courts**, which are reserved for members of the armed forces in disciplinary cases or during a state of siege (*Article 117.5 CE*).
- All other judges and courts are “ordinary” since they belong to the **Judicial Power**.
- **Exceptions allowed by the Constitution:**
 - the **Constitutional Court**.
 - customary courts, such as:
 - the **Water Tribunal of the Plain of Valencia**.
 - the **Council of Wise Men of Murcia**.

PREDETERMINATION BY LAW

3. The **competent judge** must be determined **by Parliament**, not by the executive.
 - The law must define in advance:
 - **the jurisdictional boundaries** (civil, criminal, administrative, etc.).
 - **the rules of competence** (material, territorial, functional).
 - According to **STC 47/1983, Serena Case (Tol 79214)**:
 - The judicial body must have been **created by law**.
 - It must have **jurisdiction prior to the event**.
 - It must **not** be special or exceptional.
 - The law must therefore **objectively determine beforehand** which court or tribunal is competent to hear each case.

JURISDICTIONAL RULES AND THE DOCTRINE OF UBIQUITY

- The **assigned judge** may vary depending on legal criteria, such as:
 - the **local judge**,
 - the **judge of the territory where the crime was committed**, or
 - the **nature of the offense**.
- The **Constitutional Court** has upheld laws assigning certain crimes to a **central court** (e.g., the *Audiencia Nacional*, or National Court) when justified by:
 - their **social impact**, or
 - their **geographical scope**.
- When the precise competence is uncertain, the “**Doctrine of Ubiquity**” is accepted.
- **Key principle:** jurisdictional distribution must either be **predetermined by law** or based on a **reasoned interpretation** of it.

THE INVESTIGATING JUDGE AND THE RIGHT TO IMPARTIALITY

- In **criminal proceedings**, the **Constitutional Court** has ruled that the right to an **ordinary judge predetermined by law** is **violated** when:
 - the **same person both investigates and judges** the case.
- To prevent **bias or prejudice** from influencing the final decision, the **underlying principle is**:
 - the person who **conducts the investigation should not issue the judgment**.



2.2. THE RIGHT TO AN INDEPENDENT AND IMPARTIAL JUDGE

THE RIGHT TO AN INDEPENDENT AND IMPARTIAL JUDGE

- The right to an **ordinary judge predetermined by law** ensures **judicial independence** (Art. 117 CE) and **impartiality**.
- These are **constitutional guarantees** of judicial protection and the **citizen's right to neutrality**.
- Judicial independence requires autonomy from:
 - **hierarchical superiors** and **governing bodies** of the Judiciary,
 - **other State powers** and **social pressures**, and
 - the **parties** and the **case itself**.
- This autonomy enables the judge to act **neutrally** and to decide **exclusively according to law**.

IMPARTIALITY AND THE DOCTRINE OF APPEARANCE

- The **European Court of Human Rights (ECHR)** requires both:
 - **subjective independence**, and
 - **objective impartiality**, since courts must *appear* impartial.
- This introduces the **notion of appearance**, i.e., **public confidence**, which the courts must inspire in a democratic State.
- The **Constitutional Court (STC 133/2014, Otegui and Others)** guarantees that no **reasonable doubt of bias or prejudice** exists owing to relations with the parties or the case.
- Judicial impartiality acts as both:
 - an **individual guarantee** and
 - a **collective guarantee**.

SAFEGUARDS FOR JUDICIAL INDEPENDENCE AND NEUTRALITY

- The Spanish legal system seeks to ensure judges' **neutrality and independence**, fostering **public confidence** in justice.
- **Mechanisms of neutrality:**
 - The **Constitution (Art. 127 CE)** prohibits **judicial trade unions**.
 - Judges must **refrain from public statements** on pending cases.
 - A **strict regime of incompatibilities** prohibits any other professional activity, except:
 - **teaching or academic research**.
- **Guarantees of independence:**
 - **Objective access** to the judiciary is through **competitive exams**.
 - **Tenure is held until retirement age**.
 - Removal, suspension, or transfer is permitted for **legal causes** only.
 - Administrative decisions on judges' status are handled by **higher judicial bodies** or the **General Council of the Judiciary (CGPJ)**.

IMPARTIALITY, CONFLICTS OF INTEREST, AND RECUSAL

- Judges must maintain **objective and subjective neutrality** regarding both the **subject matter** and the **parties** involved.
- If a judge has a **conflict of interest**, they must **withdraw** from the case in order to ensure impartiality.
- Circumstances that require abstention (Arts. **217–228 LOPJ**) are:
 - **a personal interest** in the case,
 - **a personal connection** with one of the parties, and
 - **any situation that risks partiality**.
- If the judge does **not abstain**, the citizen has the **right to recuse** them.
- These mechanisms ensure that justice is **rendered without bias**.

2.3. ACCESS TO JUSTICE



A) FREE ACCESS TO LEGAL PROCEEDINGS

- The **right to free access to legal proceedings** is the **first step** in the exercise of judicial protection.
- According to **STC 22/1982 (*Cabañas Vicente Case*)**, this involves:
 - the right to ensure that a **process be opened and conducted** in order to defend legitimate interests under the **guarantees** of due process.
- It implies access to **lawful means** that enable a court to **preserve or restore** a disturbed or violated legal situation.
- It includes the **right to appeal adverse judgments** through **legally established remedies**.
- It also includes the right to:
 - **be a party** to the proceedings,
 - **identify defendants or accused persons**, and
 - **choose the procedural path**.

LIMITS AND JUDICIAL INTERPRETATION

- The right to access appeals does **not entail** a right to demand that Parliament **create new remedies**.
- It ensures access only to **existing legal remedies**.
- However, when the **absence of certain remedies** results in **insufficient protection** of rights, judges must interpret procedural law **in favor of the individual's interests**.
- Courts should, **whenever possible**, facilitate access to:
 - **judicial procedures**, or
 - **other judicial measures** that safeguard rights and legitimate interests.

B) POSSIBLE INADMISSIBILITY OF AN APPEAL

- To access the **judicial system** or a specific **appeal**, procedural laws require compliance with certain **formal conditions**.
- Failure to meet these conditions may lead to **inadmissibility** due to:
 - a **lack of jurisdiction** of the court,
 - a **lack of standing** (*legitimación*),
 - the **expiration of legal deadlines** (*prescripción*), or
 - other **procedural defects**.
- The judge's decision to declare an appeal **inadmissible**:
 - must not be **arbitrary, unreasoned, or unreasonable**,
 - must avoid **manifest error** or **excessive formalism**, and
 - must follow the ***pro actione* principle**, ensuring the **widest possible access** to justice.

A photograph of a courtroom scene. In the foreground, the backs of three people (two men and one woman) are visible as they sit in wooden chairs, facing the court. In the background, a long wooden bench serves as a desk for several individuals. On the left, two men in suits are seated. Further back, a woman is at a computer. To the right, three more people (two men and one woman) are seated at the bench. The room has wood-paneled walls, a red flag, and a framed picture. The floor is made of light-colored wood.

3. DEVELOPMENT OF THE PROCEEDINGS AND ITS RIGHTS.

THE RIGHT TO A FAIR TRIAL AND EFFECTIVE JUDICIAL PROTECTION

The **right to effective judicial protection** extends beyond access to courts, covering **rights during the entire process**.

These include:

- The **right to a fair trial**, without **defenselessness**.
- The **right to equality of arms** between the parties.
- The **right to legal assistance** and a **public hearing**.
- The **right to present arguments** and **admit relevant evidence**.

Guarantees under Article **24.1 CE** ensure that no one suffers **defenselessness** and that everyone has an **opportunity to defend** their legal position.

A) THE PROHIBITION OF DEFENSELESSNESS AND THE RIGHT OF DEFENSE

Defenselessness is prohibited by **Article 24.1 CE**.

It arises when someone is **deprived of the opportunity** to assert their rights within the process.

The **right of defense** includes:

- Adequate **time and facilities** to prepare one's case.
- **Communication with one's counsel** of choice.
- The right to **submit arguments** and use appropriate **means of defense**.

In a fair trial, parties may use **pertinent evidence** to prove their claims.

Judges may reject evidence if:

- it is **irrelevant, repetitive, or dilatory**.
- the rejection is **reasoned and justified**.

A violation occurs only when the denial is **unjustified, arbitrary, or unreasonable**.

ILLICIT EVIDENCE AND EQUALITY IN THE PROCEEDINGS

Only **lawful evidence** (*prueba lícita*) is admissible.

- **Art. 11.1 LOPJ**: evidence obtained **in violation of fundamental rights** has **no legal effect**.
- This applies to cases involving:
 - **secrecy of communications**,
 - **inviolability of the home**,
 - **confessions obtained under torture**.

To prevent defenselessness:

- The process must ensure **equality between the parties**.
- Neither the law nor the judge may place one side in an **advantageous position**.

Example: violation occurs if an interpreter is not provided to a party who:

- does **not understand the language**, or
- suffers from a **disability** (hearing or visual) that prevents equal participation.

B) THE RIGHT TO LEGAL ASSISTANCE

The Constitution guarantees the **right to legal assistance** (*asistencia letrada*) for all parties in judicial proceedings.

The purpose is to ensure **effective defense** and **equality of opportunity** between litigants.

Legal counsel provides:

- **Technical legal aid.**
- **Order and fairness** in proceedings.

Procedural complexity without legal guidance could cause **defenselessness** and **procedural chaos**.

Parties have the right to **freely choose and appoint a lawyer**, though not everyone can afford one.

FREE LEGAL AID (ARTICLE 119 CE AND LAW 1/1996)

Even affordable legal services carry **economic costs**.

To guarantee **real access to justice**, Article 119 CE provides that:

- “Justice shall be free when so provided by law, and in all cases for those who prove insufficient resources to litigate.”

Legal framework: **Law 1/1996, of 10 January, on Free Legal Aid**.

The right to free legal aid is also known as the right to proceed ***in forma pauperis***.

Parties have the right to be provided a **court-appointed lawyer** (*abogado de oficio*).

These lawyers are assigned by the **Governing Boards of the Bar Associations**.



**WHO, IN YOUR
OPINION, SHOULD BE
THE BENEFICIARIES OF
FREE LEGAL AID?**

BENEFICIARIES OF FREE LEGAL AID

This right extends beyond those suffering economic hardship to include:

- **victims of gender-based violence**
- **victims of terrorism**
- **victims of human trafficking**
- **minors and persons with disabilities** needing special protection
- **victims of crimes of homicide, injury (Arts. 149–150), habitual abuse (Art. 173.2), crimes against liberty or sexual integrity, and human trafficking (Art. 2.2 Law 1/1996).**

Foreigners in Spain (*Organic Law 4/2000, Art. 22*) also have the right to:

- **free legal assistance** in all judicial proceedings.
- **legal and interpreter assistance** in **administrative or asylum procedures** (denial of entry, expulsion, etc.).

This assistance is free of charge when the foreign party **lacks sufficient resources**.

C) THE RIGHT TO A PUBLIC TRIAL

The right to a public trial is an essential element of the Rule of Law.

Public proceedings ensure that:

- **judicial actions comply with the law, and**
- **citizens are informed** about the judiciary's activity.

It is primarily a **guarantee of a fair trial**

It stands in opposition to **secret or closed trials** that are typical of **non-democratic regimes**.

This right is recognized internationally under:

- **Art. 10** of the *Universal Declaration of Human Rights*.
- **Art. 14** of the *International Covenant on Civil and Political Rights*.
- **Art. 6.1** of the *European Convention on Human Rights*.

It is recognized constitutionally under:

- **Art. 24.2** and **Art. 120.1 CE**: “Judicial proceedings shall be public, except as provided by procedural laws.”

PUBLICITY, TRANSPARENCY, AND EXCEPTIONS

Consequences of the constitutional principle of publicity in legal proceedings:

- The **existence of proceedings** is publicly notified.
- **Judgments are rendered in public hearings** (*Art. 120.3 CE*).
- **Final decisions are published** and accessible to the public.
- Information can be accessed:
 - **directly**, by attending the hearing, or
 - **indirectly**, through the **press**.

Exceptions to publicity may be ordered by the judge or by law in order to protect:

- **minors, victims, privacy, national security, or the public interest.**

Not all stages are public:

- In **criminal proceedings**, only the **trial phase** is public.
- The **investigation phase** remains **confidential**.

4. TERMINATION OF THE PROCEEDINGS AND RIGHTS

**VISTO PARA
SENTENCIA**

A) THE RIGHT TO A DECISION ON THE MERITS

- The **right to due process** does **not guarantee** a favorable judgment.
- Article 24.1 CE does not ensure the justice or correctness of the decision, nor the satisfaction of any party's claim.
- What is protected is the **right to a judgment founded in law**, which means that:
 - the judge must rule according to **the legal order**, not according to personal criteria,
 - the decision must **address the merits** of the case, and
 - the reasoning must be **explicit and legally motivated**.

JUDICIAL REASONING AND COHERENCE

- Judges must **explain the legal grounds** for their decision (*motivación judicial*).
- Parties have the right to a **clear and explicit response** to decisive arguments.
- Reasoning must be:
 - **relevant, proportionate, and coherent.**
- The judgment must also be:
 - **consistent (*congruente*)**, i.e., the decision matches the claims presented, and
 - **rational**, i.e., based on logical, factual, and legal reasoning.

B) THE RIGHT TO A TRIAL WITHOUT UNDUE DELAY

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- **Article 24.2 CE** guarantees the right to a **public trial without undue delay and with full guarantees**.
- This is **not** an absolute right to a fast trial but the right to one that is **free from arbitrary or unjustified delays**.
- **Key principle:** justice must be **timely** in order to be **effective**.
- The aim is to ensure that proceedings are resolved **within a reasonable time**, while respecting both fairness and efficiency.

CRITERIA FOR ASSESSING UNDUE DELAY

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- Factors used to determine whether there has been undue delay are:
 - **the complexity of the case**
 - **the conduct of the parties**
 - **the diligence of the judge**
 - **court congestion** and case overload
 - **the consequences of the delay** for the parties
 - There is **no right to strict procedural deadlines** but there is a right to **resolution within reasonable time limits**.
 - Undue delay often reflects **structural deficiencies** in the justice system, not judges' negligence.

STRUCTURAL ISSUES AND STATE RESPONSIBILITY

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- **Structural slowness** in the judiciary requires **thorough procedural and material reform**.
- ⁴⁷ • **Article 121 CE** on undue delay refers to “irregularity in the administration of justice.”
 - If undue delay is recognized, the **affected party is allowed to claim compensation** from the **State**.

C) THE RIGHT TO JUDICIAL REVIEW

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48

- The **right to effective judicial protection** includes the **right to have a decision reviewed** by a higher court **when provided for by law**.
- This is part of the **right to appeal**, as established in **procedural regulations** for each jurisdiction.
- However, the **right to a second instance** is **not automatic** and **only applies when expressly granted by law**.
- The **exception to this** is in **criminal proceedings**.

LEGISLATIVE AND JUDICIAL DUTIES

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- The **legislator** is **not obliged** to create a second instance but **must not set rigid or unnecessary barriers** to the filing of appeals.

49

- **Judges** must :
 - interpret procedural requirements in a **favorable and flexible** way, and
 - promote the **effective exercise** of the right to appeal.
- The aim is:
 - to facilitate **judicial review** of the decisions, and
 - to ensure the **broadest possible access** to remedies within the legal framework.

D) THE RIGHT TO ENFORCEMENT OF JUDICIAL DECISIONS

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- The **right to effective judicial protection** includes:
 - the **right to a decision on the merits**, and
 - the **right to enforcement** of final judgments.
- Enforcement is a **pillar of the Rule of Law** and **legal certainty**.
- **Art. 118 CE** states that:
 - “It is mandatory to comply with final judgments and other resolutions of judges and courts, and to provide the collaboration required by them.”
- Without enforcement, there is **no proper Rule of Law**.

CONSTITUTIONAL AND PROCEDURAL FOUNDATIONS

- **The Constitutional Court:**

- recognizes **enforcement as a subjective right**.

The judgment must ensure:

- **restoration of the violated right**, and
 - **reparation for the harm caused**.

- Enforcement must **complete** judicial protection through effective compliance.
- If the losing party does not comply voluntarily, the legal system provides **procedural mechanisms** to compel execution.

LIMITS AND THE PRINCIPLE OF *RES JUDICATA*

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- Enforcement proceedings must focus **only on the content of the judgment and cannot:**
 - **alter or extend** what the sentence resolved,
 - apply to **third parties** not bound by the judgment, or
 - **reopen settled issues** already resolved with *res judicata*.
 - **Art. 207.3 Civil Procedure Act** prohibits reopening issues decided by a final judgment.
 - The right to enforcement applies **only to final and unalterable decisions**.
 - It is related to the **principle of *res judicata***.

**5.
CONSTITUTIONAL
GUARANTEES OF
CRIMINAL
PROCEEDINGS**



A) THE RIGHT TO BE INFORMED OF THE CHARGES AND THE RIGHT TO SELF-PROTECTION

- The **Constitution** provides **specific guarantees** for criminal proceedings (Art. 24.2 CE).
- These aim to protect:
 - **the accused** (primarily),
 - **victims** (with special attention to minors or people with disabilities), and
 - **witnesses and other participants**.
- Protective measures may include:
 - providing testimony via **recorded statements**, and
 - preventing **visual confrontation** with the accused.

THE RIGHT TO BE INFORMED OF THE CHARGES

- **Article 24.2 CE** supplements general procedural rights with specific guarantees, such as:
 - ensuring an **impartial judge**,
 - strengthening the **right of defense**, and
 - preventing **arbitrariness** in proceedings.
- The **presumption of innocence**—the **core principle** of criminal justice—is protected.
- Constitutional guarantees in criminal law can be divided into **four main rights**, starting with **the right to be informed of the charges?**

THE RIGHT TO BE INFORMED OF THE CHARGES

Art. 24.2 CE: The right to be informed of the charges and the right to defend oneself effectively.

- Requirements:
 - **specificity of charges** (no conviction for unknown or uncharged facts).
 - **prompt and detailed notification** in a **language that is understood** by the accused.
 - **legal assistance** and, if required, **interpreter support**.
- This right includes:
 - the right **to remain silent** and **not to self-incriminate**,
 - The right **not to testify** on the grounds of **kinship or professional secrecy**

Silence **alone** cannot justify conviction without corroborating evidence.

B) ORALITY, CONCENTRATION, AND PUBLICITY IN CRIMINAL PROCEEDINGS

- **Art. 120.2 CE:** “Proceedings shall be predominantly oral, especially in criminal cases.”
- The **oral principle** applies to the trial phase only, not to the investigation.
- The aim of the **concentration principle** is to achieve the **greatest procedural efficiency** and unity of action.
- The **publicity principle**:
 - ensures **transparency** and allows for **social oversight** of justice,
 - relates to the **right to access and share information**, and
 - helps society understand how justice **prevents, prosecutes, and punishes** crime.
- A process is considered public **regardless of the size of the audience**, but **publicity is not absolute**.

LIMITS TO PUBLICITY AND MEDIA INFLUENCE

- **Restrictions** may be justified for:
 - the **privacy** of the parties,
 - the **safety** of witnesses or victims,
 - **national security issues**, or
 - **other interests of justice**.
- **Art. 6.1 ECHR** allows the exclusion of public or press “when the protection of private life so requires.”
- Related laws that reinforce this protection are:
 - **Law 4/2015** (Victims of Crime),
 - **Law 35/1995** (Victims of Violent/Sexual Crimes),
 - **Law 5/2000** (Minors’ Criminal Liability),
 - **OL 1/2004** (Gender Violence Protection),
 - **OL 8/2021** (Childhood and Adolescence Protection).

C) THE PRINCIPLE OF PRESUMPTION OF INNOCENCE

- **Art. 24.2 CE:** “Every person accused of a crime has the right to be presumed innocent until proven guilty according to law.”
- The **presumption of innocence** is a **core guarantee** of criminal proceedings.
- It applies **in the criminal sphere only**, once a **concrete suspicion** is directed against an individual.

BURDEN OF PROOF AND EVIDENTIARY REQUIREMENTS

- **STC 105/1988 – Article 509 CP Case (Tol 109337)** – has two key consequences:
 - **The general presumption of innocence implies that:**
 - citizens are presumed **not guilty**,
 - the **burden of proof** lies with the **prosecution**, and
 - presumption is ***iuris tantum***.
 - **Proof beyond reasonable doubt implies that:**
 - conviction requires **sufficient and reasoned evidence**,
 - guilt must be proven **beyond all reasonable doubt**, and
 - evidence must be **lawful** and **must have been obtained with full guarantees**.

STANDARD OF PROOF AND PRACTICAL APPLICATION

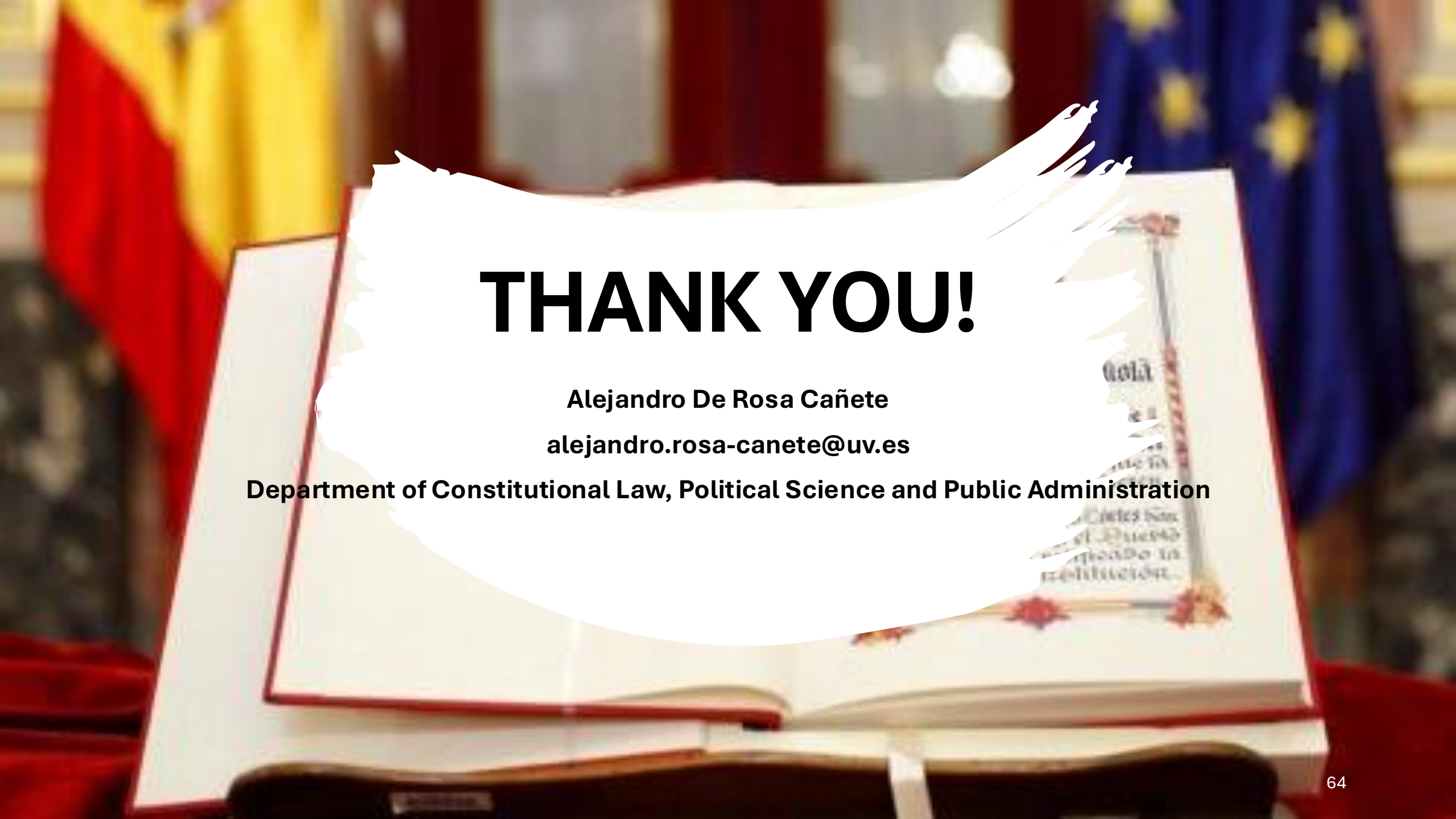
- Principle *in dubio pro reo*: “In case of doubt, the presumption of innocence prevails.”
- Every conviction must be:
 - **well-reasoned**,
 - based on **authentic acts of proof** performed at trial, or
 - confirmed during the **oral hearing** if obtained earlier.
- This guarantee protects parties against **arbitrary or unsubstantiated convictions**.

D) THE RIGHT TO REVIEW IN CRIMINAL PROCEEDINGS

- A component of the **right to effective judicial protection** is the **right to review criminal judgments**.
- Although not explicitly expressed in the **Constitution**, it is recognized by:
 - **Art. 14.5 ICCPR (1966)**, which states that “Everyone convicted of a crime has the right to have their conviction and sentence reviewed by a higher tribunal.”
- Spain has received **international criticism** for lacking review mechanisms in certain criminal cases.
- The **Constitutional Court** applies the **most favorable interpretation in order to allow** access to review.
 - In some cases, **extraordinary remedies** have served as substitutes for appeal.

REFORM AND SAFEGUARDS

- **Reform of the Criminal Procedure Act (October 2015):**
 - extends the **right of appeal (second instance)** to **all criminal proceedings**, and
 - ensures compliance with **international human rights standards**.
- An additional safeguard is the **prohibition of *reformatio in peius***:
 - This prevents a **harsher outcome** or **increased penalty** in the second instance when the **appeal has been filed by the convicted person**.
- The reform ensures:
 - **the right to a fair review**,
 - **judicial coherence**, and
 - **protection against punitive aggravation**.

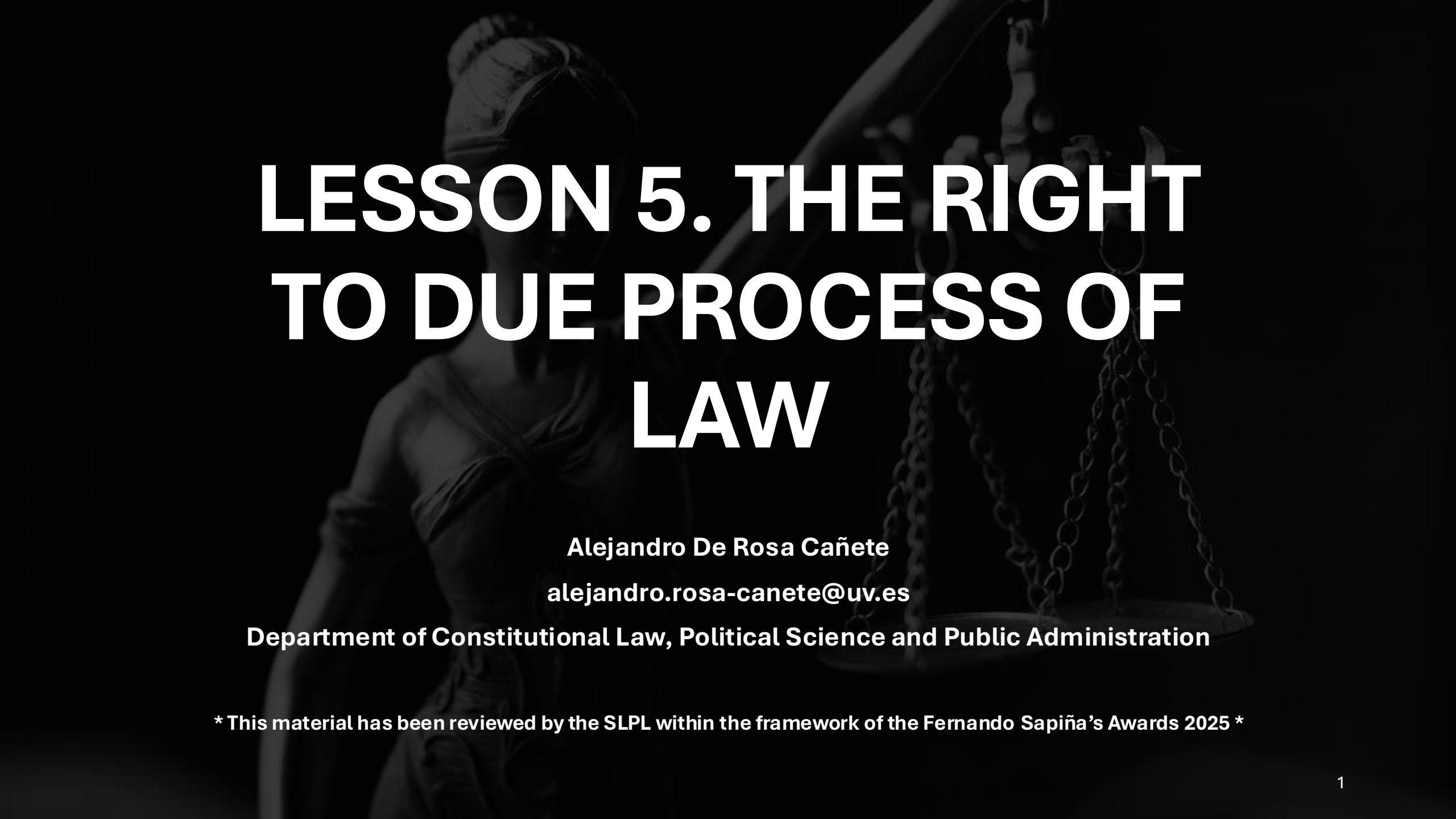


THANK YOU!

Alejandro De Rosa Cañete

alejandro.rosa-canete@uv.es

Department of Constitutional Law, Political Science and Public Administration

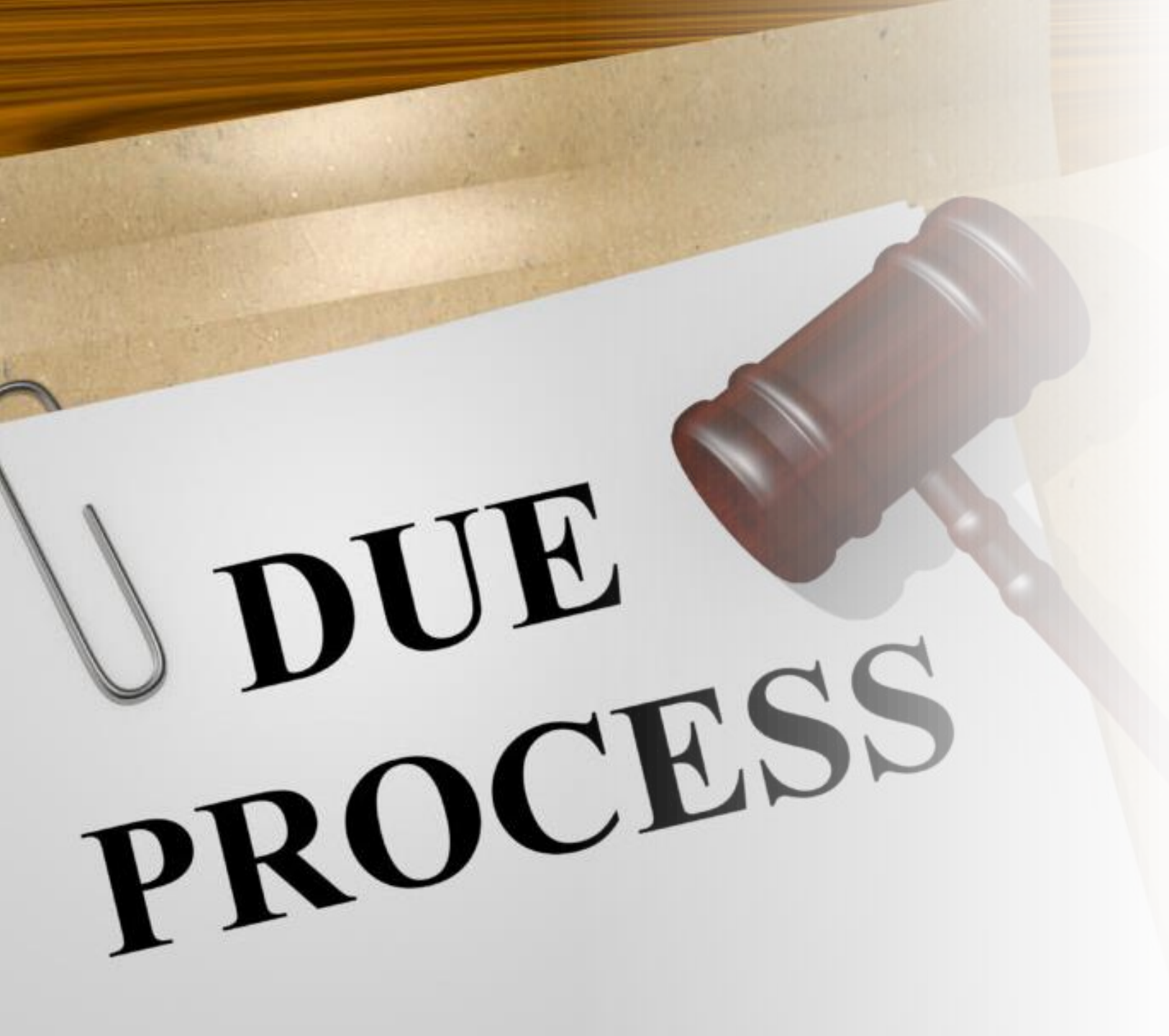


LESSON 5. THE RIGHT TO DUE PROCESS OF LAW

Alejandro De Rosa Cañete
alejandro.rosa-canete@uv.es

Department of Constitutional Law, Political Science and Public Administration

*** This material has been reviewed by the SLPL within the framework of the Fernando Sapiña's Awards 2025 ***



1. INTRODUCTION AND CONTENT OF THE RIGHT TO DUE PROCESS OF LAW



Question

👉 According to the 1978 Spanish Constitution, what Article recognizes the right to effective judicial protection?

- a) Article 14.
- b) Article 24.
- c) Article 117.
- d) Article 53.

✅ : B



Question

👉 What does the expression “effective protection” mean in the Constitution?

- a) That justice only follows formal rules.
- b) That protection is symbolic and theoretical.
- c) That protection must be real and guaranteed in practice.
- d) That only citizens can access the courts.

✅ : C



Question

👉 Who can enjoy the right to effective judicial protection under Article 24 of the Spanish Constitution?

- a) Only Spanish citizens.
- b) Only judges and lawyers.
- c) All natural and legal persons, including foreigners.
- d) Only members of the European Union.

✅ : C



Question

👉 What is the main purpose of the right to due process of law?

- a) To guarantee that everyone can defend their rights before a judge. ☒
- b) To limit access to the courts.
- c) To protect only public authorities.
- d) To replace ordinary laws.

☒ : A



TRIBUNAL SUPREMO

2. ACCESS TO THE JUDICIAL SYSTEM.



Question

👉 What does the right of access to the judicial system guarantee?

- a) The right to open and conduct a judicial process.
- b) The right to change the law.
- c) The right to avoid legal procedures.
- d) The right to create new courts.

✅ : A



Question

👉 What happens if a person does not meet the procedural requirements to file a case?

- a) The case is automatically accepted.
- b) The judge must still hear it.
- c) The case may be declared inadmissible.
- d) The person can appeal directly to the Constitutional Court.

✅ : C



Question

👉 Which principle requires judges to interpret procedural rules in favor of allowing access to justice?

- a) The principle of legality.
- b) The *pro actione* principle.
- c) The principle of hierarchy.
- d) The principle of jurisdiction.

✅ : B



Question

👉 Does the Constitution oblige the legislator to create new judicial appeals?

- a) Yes, always.
- b) No, it only guarantees access to those that already exist.
- c) Only for criminal cases.
- d) Only when requested by the government.

✅ : B

A photograph of a courtroom. In the background, a panel of five judges sits at a long wooden bench. From left to right: a man in a suit, a man in a suit, a woman in a white top, a woman in a dark jacket, and a man in a suit. They are all looking towards the front of the room. In the foreground, the backs of three people are visible as they sit in wooden chairs, facing the judges. The room has wood-paneled walls and a wooden floor. A red flag is visible on the left side of the background.

3. DEVELOPMENT OF THE PROCEEDINGS AND ITS RIGHTS.



Question

👉 What does the prohibition of defenselessness in Article 24.1 of the Spanish Constitution guarantee?

- A) The right to obtain a favorable judgment.
- B) The right to be informed of the law before trial.
- C) The opportunity to defend one's position in court with the necessary guarantees.
- D) The obligation to have all evidence admitted during the proceedings.

✅ : C



Question

👉 Which of the following situations would constitute defenselessness according to Article 24 CE?

- A) The judge refuses evidence that is irrelevant to the case.
- B) A party is deprived, without legal reason, of the possibility to assert their rights in court.
- C) A party's claim is dismissed after full participation in the process.
- D) A judge decides a case based on applicable law.

✅ : B



Question

👉 What is the main purpose of the right to legal assistance?

- A) To guarantee free access to any lawyer chosen by the defendant.
- B) To ensure equality between litigants through technical legal support.
- C) To allow the judge to assign a lawyer to every person automatically.
- D) To replace the role of the courts in defending the accused.

✅ : B



Question

👉 When may a judge order a closed hearing (*in camera*) under Spanish law?

- A) When the accused requests privacy without reason.
- B) When it is necessary to protect fundamental rights such as privacy, those of minors, or national security.
- C) Whenever the media are interested in the case.
- D) Only in criminal cases involving public officials.

✅ : B



Question

👉 3. According to Article 11.1 of the Organic Law of the Judiciary (LOPJ), what happens to evidence obtained in violation of fundamental rights?

- A) It is admissible if it benefits the defense.
- B) It can be used if the violation was unintentional.
- C) It has no effect and is considered inadmissible.
- D) It can be admitted if approved by the Constitutional Court.

✅ : C

4. TERMINATION OF THE PROCEEDINGS AND ITS RIGHTS

**VISTO PARA
SENTENCIA**



Question

👉 1. What does the right to a decision on the merits guarantee according to Article 24.1 CE?

- A) The right to obtain a favorable ruling for the plaintiff.
- B) The right to receive a judgment founded in law and properly reasoned.
- C) The right to appeal any judgment automatically.
- D) The right to have the decision reviewed by the Constitutional Court.

✅ : B



Question

- 👉 2. What does *incongruencia ex silentio* (omissive inconsistency) refer to?
- A) When a judge grants more than what was requested.
 - B) When the judgment contains contradictory reasoning.
 - C) When the judgment fails to address one of the parties' claims.
 - D) When the decision is appealed before being final.

✅ : C



Question

👉 3. Which of the following factors is not considered when assessing undue delay in proceedings?

- A) The complexity of the case.
- B) The diligence of the judge.
- C) The political affiliation of the parties.
- D) The general level of congestion in the courts.

✅ : C



Question

- 👉 4. What does the right to enforcement of judicial decisions imply?
- A) The right to appeal a final decision before a higher court.
 - B) The right to the effective implementation and compliance of final judgments.
 - C) The right to reopen a case after it has been resolved.
 - D) The right to modify the content of a judgment after execution.

✅ : B



Question

👉 5. What is the main obligation of the judge when issuing a decision, according to the principle of *congruencia*?

- A) To respond briefly to all arguments raised by the parties.
- B) To decide only on what has been requested and not grant more or something different.
- C) To ensure that all parties agree with the outcome.
- D) To provide detailed reasoning for every procedural step.

✅ : B

**5.
CONSTITUTIONAL
GUARANTEES OF
CRIMINAL
PROCEEDINGS**





Question

- 👉 1. Why do criminal proceedings have special constitutional guarantees?
- A) Because they involve private disputes between individuals.
 - B) Because they can result in the loss of personal liberty and affect fundamental rights.
 - C) Because they are shorter and simpler than civil cases.
 - D) Because they are always decided by the Constitutional Court.

✅ : B



Question

👉 2. What does the right to be informed of the charges include according to Article 24.2 CE?

- A) The right to remain silent during the entire process.
- B) The right to know both the factual elements and legal classification of the accusation.
- C) The right to receive compensation after the trial.
- D) The right to have all evidence automatically accepted.

✅ : B



Question

👉 3. Which of the following statements about the presumption of innocence is correct?

- A) It applies to all citizens, even if no criminal charge exists.
- B) The burden of proof lies with the accused person.
- C) A person cannot be convicted without sufficient and reasoned evidence proving guilt beyond reasonable doubt.
- D) It requires the absence of any possible doubt, following the Anglo-American system.

✅ : C



Question

👉 4. When can the public and press be excluded from a criminal trial under Article 6.1 of the European Convention on Human Rights?

- A) When the accused is a public figure.
- B) When it is necessary to protect privacy, morality, or the safety of the parties.
- C) When the media requests a closed session.
- D) When the judge wants to speed up the process.

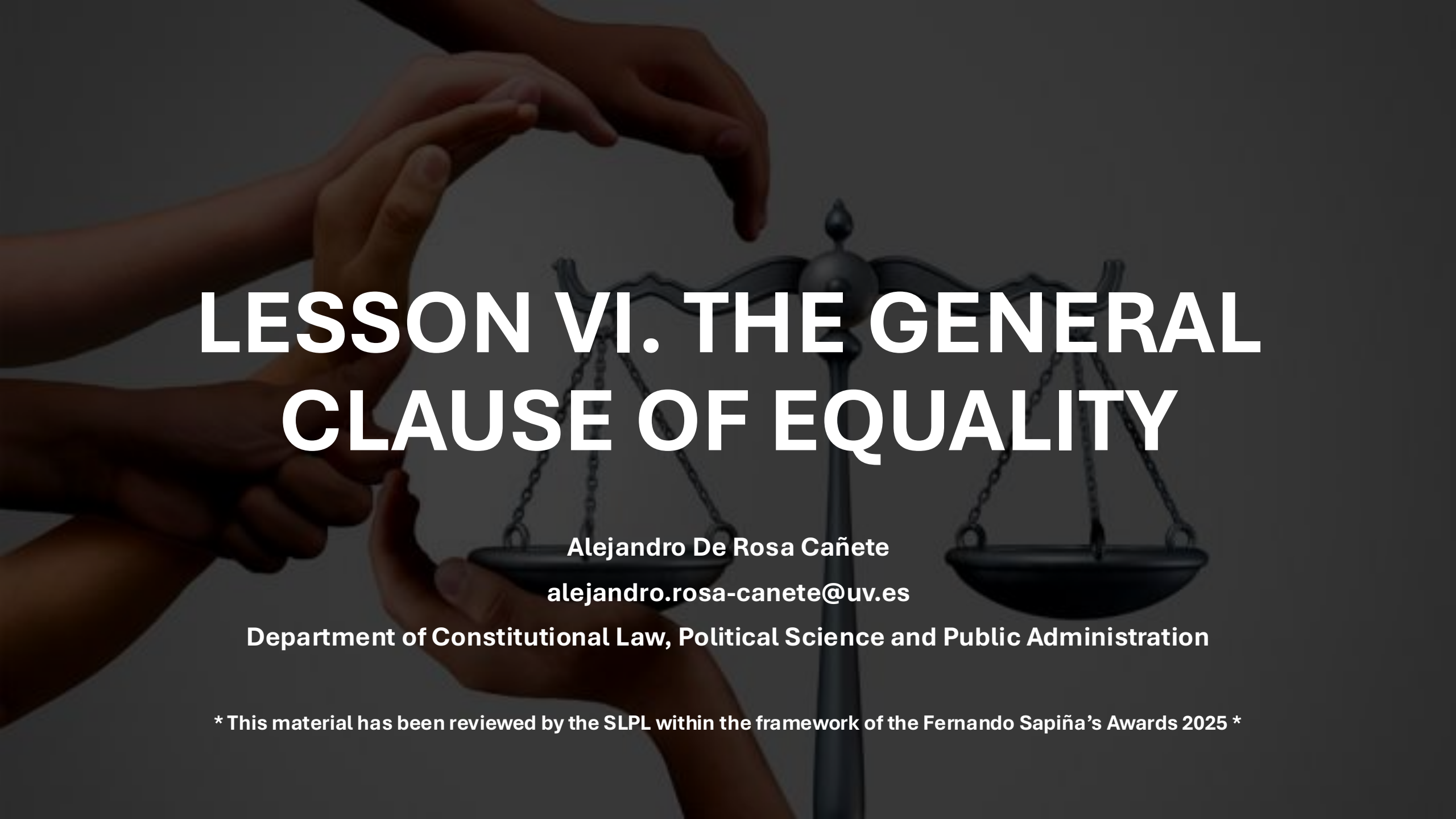
✅ : B



Question

- 👉 5. What does the principle of *reformatio in peius* protect against?
- A) Being tried again after acquittal.
 - B) Receiving a harsher penalty after appealing one's own conviction.
 - C) The application of the presumption of innocence.
 - D) The use of evidence obtained in earlier stages of the process.

✅ : B

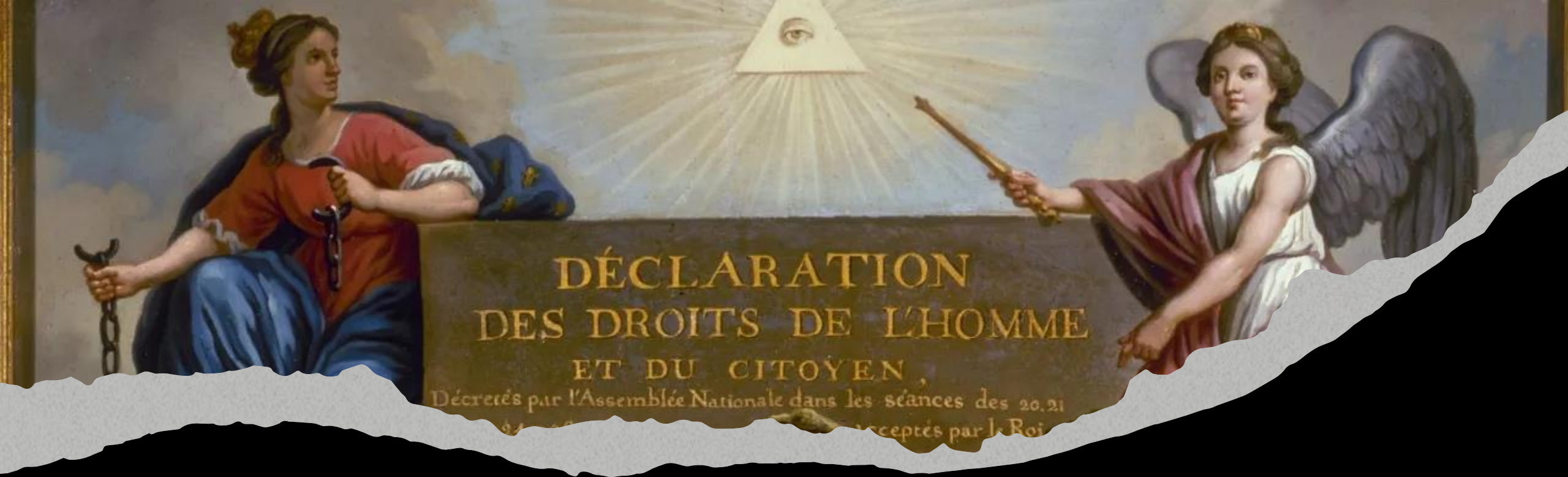
The background of the slide features a dark, moody image. In the center, a pair of hands is shown holding a small, dark, circular object, possibly a scale pan. Above this, another hand is visible, reaching down towards the same object. The overall composition suggests themes of justice, equality, and human interaction. The text is overlaid on this background.

LESSON VI. THE GENERAL CLAUSE OF EQUALITY

Alejandro De Rosa Cañete
alejandro.rosa-canete@uv.es

Department of Constitutional Law, Political Science and Public Administration

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1. THE RECOGNITION OF EQUALITY IN THE HISTORY OF CONSTITUTIONALISM



From Formal to Substantive Equality



Formal (legal) equality

- Law must be the same for all (Art. 6, 1789 Declaration)
- Equality = uniform application of the law
- Equality is not a right but a **duty** for public authorities
- It is identified with **legality**

The social turn (late 19th century)

- Shift from **liberal** to **social constitutionalism**
 - Equality acquires **material content** → real and effective equality (substantive)
 - Equality becomes **binding** on the **legislator** when making laws
 - Equality becomes a **normative principle** that:
 - is obligatory for all public authorities
 - allows different legal consequences for different situations
- 

2. CONSTITUTIONAL CONFIGURATION OF EQUALITY





Constitutional Configuration of Equality (CE 1978)

- **Historical and conceptual context of equality**
 - inspired by **post–World War II constitutions**
 - **1978 Constitution** integrates liberal and social constitutionalism
 - established as a **cornerstone** of the constitutional system
 - **Equality as a superior value (Art. 1.1)**
 - **informs the entire legal order**
 - is incompatible with pre-existing inequalities
 - Derogatory clause** → repeal of norms contrary to equality
 - **Dual dimension of equality in the Constitution**
 - a) **Value** → guidance for the entire system
 - b) **Right** → legally enforceable protection
- 

The Right to Formal Equality (Art. 14 CE)

Content and guarantees

- **All forms of discrimination** are prohibited
- **Equal treatment** is ensured for all those in the same situation
- Right = **subjective, relational and binding** on public authorities

Not uniformity, but fairness

- Different treatment for distinct situations may be justified
→ *STC 34/1981, Passive Rights Act case*

Prohibited grounds for discrimination: birth, race, sex, religion, opinion, or any other personal/social condition

Reinforced constitutional protection

- Art. **53.1–2 CE**: binding on public powers
- requires **organic law** development
- is enforceable through **ordinary courts** and **constitutional appeal (*amparo*)**

Holders of the right

- mainly **natural persons**
- sometimes also **private legal entities**, depending on the activity

Substantive Equality (Art. 9.2 CE)

- **Concept and purpose**
 - Equality is viewed as a **mandate for public authorities**
 - The aim is to **remove obstacles** that impede real equality
 - Equality extends beyond the mere prohibition of discrimination
- **Real and effective equality**
 - requires **positive measures**
 - **empowers and obliges** public authorities
 - serves as the basis for **anti-discrimination law**
- **Affirmative action**
 - Favorable, temporary measures **are not** considered **discriminatory**
 - They are valid when directed at **historically disadvantaged groups**
 - *STC 216/1991, Women Pilots case*

Cross-cutting and Fundamental Nature of Equality

- **Equality as a transversal principle**
 - is present in multiple constitutional provisions:
 - **Art. 23.3** on equal access to public office
 - **Art. 31.1** on equality in the tax system
 - **Art. 32** on equality in marriage
 - **Art. 39.2** on equality among children
- **Territorial dimension**
 - **Art. 138.2** on the prevention of privileges among Autonomous Communities
 - **Art. 139.1** on equality of rights and duties across the territory
 - **Art. 149.1.1** on the State's exclusive power to ensure conditions of equality
- **Summary**
 - Equality is a **structural, binding, and omnipresent principle** in the constitutional order

A golden statue of Lady Justice, the personification of the law, is shown from the waist up. She holds a sword in her right hand and a pair of scales in her left. The background is a clear blue sky. A semi-transparent white box with a thin black border is centered over the image, containing the text.

**3. SCOPE OF EQUALITY.
EQUALITY BEFORE THE LAW,
WITHIN THE LAW AND IN
APPLICATION OF THE LAW.**

Scope of Equality: “Before the Law and in the Law”

- **Constitutional obligation**
 - Equality binds **all public authorities**, both positively and negatively.
- **Equality before the law**
 - Law must be **general, abstract, and universal**.
 - It must treat **everyone equally**.
- **Singular laws** (laws of one case) → exceptional and limited:
 - are valid only in **extraordinary cases** (STC 129/2013, *Regional Waste Projects*).
 - must meet the requirements of **reasonableness, proportionality, and adequacy**.
- **Key idea:** equality acts as a **limit on legislative power**, preventing arbitrary privileges.

Equality in the Law: The Constitutional “Equality Test”

- **Dual dimension of equality**

- Equality is not only **formal** but also **material**, affecting the contents of laws.
- The legislator must ensure **equal treatment for equal situations**.

- **The Equality Test (Constitutional Court doctrine)**

1. Equal facts → equal legal consequences.
2. A violation exists only if the difference in treatment has no **objective and reasonable justification**.
3. Differentiation must have a **reasonable purpose**.
4. **Artificial or unjustified differences** are prohibited.
5. Must pass **proportionality test** in order to avoid excessive or unfair results.

- **Final principle:**

- A difference in treatment is constitutional **only if it is reasonable, necessary, proportionate, and adequate**.

Equality in the Application of the Law

Binding effect on the Judiciary and Administration

- Both must **respect equality** when applying and enforcing the law.
- The Administration cannot give **unequal treatment** in identical cases.

The Judiciary and equality

- Citizens have a **right to equal judicial treatment**.
- The same court cannot **change criteria arbitrarily** in identical cases.

Key principles:

- There is no violation if rulings come from **different courts**.
- A ***tertium comparationis*** (comparable precedent) must be provided.
- Judges may change precedent **with objective justification**.
- “**Equality in illegality**” is not permitted: equal treatment cannot be claimed in cases of wrongdoing.

Equality and Private Individuals

Different obligations

- **Public authorities** have both a positive and a negative duty (to protect and not to violate).
- **Private actors** have a negative duty (to refrain from discrimination).
- Autonomy of will coexists with **non-discrimination duty**.

Labor relations as a key field

- Private relationships are not **not excluded** from the principle of equality (*STC 177/1988*).
- Autonomy must respect **constitutional and legal equality rules**.

Examples and test

- Discrimination in clubs, airlines, hotels, and associations, etc.
- Application of the **proportionality and suitability test** depends on public/private relevance.

**4.
DISCRIMINATION
AND DIFFERENTIAL
TREATMENT.**



Prohibition of Discrimination (Art. 14 CE)

Constitutional framework

- *Art. 14 CE* identifies “**suspect categories**”
 - birth, race, sex, religion, opinion
- Open clause: “**any other personal or social condition or circumstance**”

Key idea:

- The prohibition of discrimination is an **open and evolving clause** that adapts to modern contexts.

Examples: Birth and Race

- **Discrimination on the grounds of birth**

- Protection against this form of discrimination is linked to **Art. 39 CE** on equal protection for all children.
- It ensures the **right to compensation** for extramarital children (*STC 154/2006*).

- **Discrimination on the grounds of race**

- Historically, this is one of the **most frequent and serious** causes of discrimination.
- It is one of the **suspect categories** requiring strict scrutiny.

- **Summary:**

→ Equality and non-discrimination principles operate **across constitutional, European, and international systems** to guarantee **real and universal protection**.

Equality on the Grounds of Sex

- **Constitutional breakthrough (1978 CE)**

- Women were recognized as full legal subjects for the first time.
- **Sex-based discrimination was prohibited** in what was a major legal reform.
- Discriminatory norms were eliminated across all areas

- **Jurisprudence and constitutional doctrine**

- **Sex discrimination** includes:

- direct bias based on sex
- indirect bias linked to sex (e.g., **pregnancy**)

- **STC 128/1987 (Nursery Schools)**: legitimizes **affirmative action** → Positive measures to achieve *real and effective equality*

- **Legislative and policy advances**

- **Organic Law 3/2007**: “Effective Equality of Women and Men”

- Defines discrimination types
- Promotes **cross-cutting equality policies** (political, labor, social, etc.)

Other Forms of Discrimination (Art. 14 CE)

Religion and opinion

- Protected under **Art. 16 CE**
- Part of the *suspect categories* of discrimination

Age

- This form of discrimination is recognized through the **open clause** (“any personal or social condition”).
- **STC 63/2011 (Pharmacy Licensing)**: struck down age limits over 65 as unconstitutional.
- Reasonable distinctions are allowed (e.g., pensions) but **wage differences cannot be justified on account of age**.

Sexual orientation

- Homosexuality was historically **criminalized** (1954 Vagrants Act)
- **ECHR Dudgeon v. UK (1981)** outlawed the criminalization of consensual same-sex acts
- **Law 13/2005** legalized **same-sex marriage**
 - Pension rights linked to marriage **are not considered discriminatory**

• **Summary principle** → Modern constitutionalism embraces **substantive equality and diversity**, prohibiting discrimination on any unjustified ground.

Reinforced Protection (Art. 14 CE)

A strict standard of scrutiny

- is applied to suspect categories: **sex, race, religion, opinion, birth**
- requires **heightened justification** and **proportionality**
- implies that any differential treatment must undergo **rigorous constitutional review**

Example: Differential treatment on account of religion, race, or sex requires **extra justification**.

• **Principle** → Greater constitutional vigilance is necessary where the fundamental values of equality are at stake.

Reversal of the Burden of Proof

- **Key procedural consequence**

- Those defending a differential treatment must **prove its legitimacy**
- Example: in an alleged discriminatory dismissal, the employer must demonstrate that the dismissal was based on **non-discriminatory reasons**.

- **Duties of the plaintiff**

1. To demonstrate an actual difference in treatment.
2. To provide rational indications linking it to a prohibited ground for dismissal.
3. To present **credible (plausible) evidence**.

- **Limits to the employer's obligation**

- The employer is not required to provide “**diabolical proof**” of non-discrimination.
 - The employer must prove that the decision was **reasonable and proportionate**.
- *STC 41/2002, Pregnant Worker Case*

Types of Discrimination (I): Direct and Indirect

- **Direct discrimination**

- involves manifestly unequal, unfavorable treatment (Law 3/2007, Art. 6.1)
- encompasses the “equal work for equal pay” principle
- treating employees differently due to pregnancy or maternity = discrimination on the grounds of sex → *STC 136/1996, Dismissal for Pregnancy*

- **Indirect discrimination**

- occurs when a neutral rule has a disproportionate adverse effect
- Spanish case: *STC 145/1991, Gregorio Marañón* → wage disparity

Other Forms of Discrimination

By association

- Discrimination due to one's connection with a protected person

Multiple discrimination

- Overlapping traits: race, gender, disability, migration, etc.

Paternalistic or falsely protective measures

- Such measures appear beneficial but perpetuate inequality, e.g.:
 - the ban on women in mining (*STC 229/1992*)
 - early retirement for female flight attendants (*STC 207/1987*)
 - “Protective” labor laws that restrict women's access to work

Final idea → Equality demands **substantive protection** and the **elimination of disguised or structural inequalities**.

**SUBSTANTIVE EQUALITY AND
ANTI-DISCRIMINATION LAW.
POSITIVE DISCRIMINATION
ACTIONS.**



Substantive Equality and Anti-Discrimination Law

- **Post–World War II context**
 - Equal treatment requires **equal opportunity**.
 - **Anti-discrimination law** originated in the United States.
 - Initially, the main focus was on racial justice movements.
 - Focus later expanded to sex, age, disability, and religion, etc.
- **Purpose**
 - To **address factual inequalities**.
 - To ensure **real and effective equality**.

European and Spanish Legal Foundations

- **European framework**

- Directive 2000/78/EC** on equal treatment in employment and occupation

- Grounds: religion/belief, disability, age, sexual orientation

- Art. 7 allows **positive action** to offset disadvantages

- EU Charter of Fundamental Rights (Art. 23):**

- The principle of equality allows **advantages in favor of the underrepresented sex.**

- **Spanish framework**

- **Art. 9.2 CE** enables the adoption of rebalancing measures

- **Art. 14 CE**, modulated by article 9.2 → Favorable actions are not considered discriminatory.

- **STC 216/1991 (Women Pilots case)** → Affirmative action is **constitutionally legitimate.**

Concept and Function of Anti-Discrimination Measures

- **Anti-discrimination law**

- goes beyond prohibiting discrimination
- focuses on **creating equal conditions** for opportunity and treatment
- operates as a **structural correction** of existing inequalities

- **Example of application**

- Labor inclusion quotas
- Scholarships or programs aimed at historically excluded groups
- Gender parity policies in political and corporate bodies

Key Characteristics

1. Group-based nature

- Measures address **collective disadvantages** rather than individual cases.
- They target groups that have historically faced discrimination (e.g., women and minorities).

2. Temporary validity

- The measures are justified only **until the imbalance has been corrected**.
- They must end once equality of opportunity has been achieved.

Affirmative (Positive) Action

- **Definition and purpose**

- These are measures of **support or encouragement** for disadvantaged groups.
- Their aim is to **restore balance** and ensure **equal opportunities**.
- They must not harm other groups.

- **Examples**

- **Childcare allowance** for working mothers.
- **Incentives for hiring** discriminated groups (gender, age, disability).

- **Constitutional basis**

- They are based on the link between **substantive equality (Art. 9.2 CE)** and **affirmative action**.

Reverse or Positive Discrimination

- **Definition**

- These measures represent a more assertive form of anti-discrimination law.
- They involve **quotas, reserved positions, or preferential treatment.**

- **Characteristics**

- These measures create benefits for some but disadvantages for others.
- Constitutionality depends on:
 - **reasonable justification**
 - **passing the proportionality test**

European Case Law and Limits

- **European Court of Justice cases**

- **Marschall (1997):** quotas are acceptable if they are not absolute or unconditional.

- **Principles from EU doctrine**

- Assessment is made on a case-by-case basis.

- **New, unjustified inequalities** must not be created.

- Affirmative and reverse measures must remain **temporary, balanced, and proportionate**.

- **Summary** → Anti-discrimination measures are **tools of substantive equality** that ensure **real, fair, and constitutionally legitimate balance** between groups.

The background of the slide features a dark, semi-transparent image. On the left, several hands of different skin tones are shown in a gesture of support or holding. On the right, a black scale of justice is visible, with its pans hanging from a central beam. The overall theme suggests law, justice, and community.

Thank You!

Alejandro De Rosa Cañete
alejandro.rosa-canete@uv.es

Department of Constitutional Law, Political Science and Public Administration