# Comparative Analysis of Constitutional Protections in Canada and Germany

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# Abstract

This section will provide a brief background of the legal systems in Canada and Germany, particularly the constitutional provisions of criminal justice systems. It will then highlight critical themes, such as due process, search and seizure, self-incrimination, and the right to counsel.

# Introduction

The legal systems of both Canada and Germany proved suitable for comparison with common law and civil law systems that respond quite differently in protecting human rights within the criminal justice context. In Canada, the system is governed by Common Law, wherein the court's decisions prevail. It is a highly procedural system with strong rights protection based on the Canadian Charter of Rights and Freedoms. At the same time, the legal system of Germany is based on the Grundgesetz or Basic Law with the underlying principle of Rechtsstaat, "which follows equal application of written laws pertaining to the emphatic conception of human dignity and constitutional sovereignty derived from historical forms" Karakamisheva-Jovanovska 2020. Both countries do not compromise on the liberties of a person and have laid lawful restrictions on the powers of a state. However, their respective legal traditions make them differ in the balancing scale between state authority and individual rights, which is particularly worth mentioning, given that the Canadian Common Law allows much freedom for interpretation, whereas Germany is a code law country. It is worth noting that Canadian common law leaves much room for interpretation, while Germany is a code-law country. Such an analysis of the constitutional protections of due process, search and seizure, self-incrimination, and right to counsel within each framework helps explain how both justice systems attempt to achieve justice in criminal cases and which justice system affords greater protection to accused persons.

# Constitutional Protections

Constitutional rights for persons in criminal justice systems in Canada and Germany are meaningful for each respective country in its pursuit of justice. These warranties are found in the Charter, which sets the boundaries of state authority regarding exercising citizens' rights and freedoms, be it in the Canadian Charter of Rights and Freedoms or Germany's Grundgesetz. While both countries were committed to liberal principles and granted their citizens’ rights, the justice system differed. Due process rights protection against illegal search and seizure, the right against self-incrimination, and the right to counsel demonstrate how each of the countries being analyzed is carrying out and protecting these basic rights and how it affects justice for the country under analysis (Hofman, 2020).

**Due Process**

In Canada, the doctrine of due process is one of the constitutional fundamentals. It is provided in section 7 of the Canadian Charter of Rights and Freedom, which states the person's right to life, liberty, and security. To ensure that people are dealt with fairly by the law, no one should be deprived of their rights by the state unless done under the doctrines of fundamental justice in section 7 of the act (Hickey & Rancourt, 2022). These principles require laws and processes related to them to be reasonable, understandable, and proportionate, which is a protection against the power of the state or its departments. It has been left to the Canadian courts to define the degree to which due process is accorded, and it has been seen in issues such as criminal trials, immigration privileges, and health care, amongst others, where individual rights and freedom come against state power.

In Germany, due process can be traced to the Rechtsstaat principle, whereby the law must back all state actions. Following this premise, justice is reflected comprehensibly and within the procedures of various legal transactions (Karakamisheva-Jovanovska, 2020). Rechtsstaat is especially dear to the Germans because, after World War II, the country was keen to avoid the abuses of state power that characterized the authoritarian regime before adopting the modern constitution. Under this principle, all states' actions must be reasonable; in other words, if there is an encroachment on people's rights, it must be done in the state's legal interest. In both countries, the state must provide technical legal protection against arbitrary action if this is within its power. However, the actual enforcement of those rights is achieved in different ways. Whereas in Canada, the law is more open to constitutional interpretations to add to and define due process rights and wrongs, in Germany, it is more distinguished by reliance on codes and operative rules.

**Search and Seizure**

Another critical area to compare between Canada and Germany is the protection against unreasonable search and seizure. At the same time, both countries recognize this protection, but there is a primary difference in how each country enforces and upholds this protection. Canada's Charter of Rights and Freedom section 8 protects citizens against unreasonable search and seizure. Law enforcement must obtain judicial warrants for searches to be legal (Hofman, 2020). Therefore, this protection applies to both physical and cyberspace, and this is due to the rising awareness of privacy with the increasing usage of technology. Canadian courts have fashioned a test to determine the reasonableness of the search. This test allows the search to be turned loose by law, and the law is reasonable and conducted reasonably. In essence, this means that police require probable cause to search, and if evidence has been seized through infringement of this provision, they will be barred from using it in court.

Germany’s equivalent protection rooted in Germany’s constitution (Grundgesetz) of the country is found under Article 13, which protects the privacy of home and other premises and against the government's trespassing of their homes. According to Wörner and Preetz (2020), this constitutional article is susceptible considering historical experience in Germany, characterized by state bureaucracy abuse of their authority and intrusion into individuals' privacy in totalitarian states. Therefore, the legitimacy of the actions of the state bodies in Germany is primarily determined by the principle of proportionality. Any search or seizure can only be conducted where there is a legal basis and, most importantly, legitimate public interest. During the last few years, Germany passed unique legal acts regulating citizens' privacy in the digital environment, such as The Darknet and Organized Crime (Wörner & Preetz, 2020). Such laws enable more intensive observation and control over social networks and other sites, but many civil liberties are violated on the Internet.

Notwithstanding the differences, Canada and Germany firmly maintain that searches must be justified and lawful. Both nations use the courts to ensure that police forces do not act outside the confines of the law. Canada uses the exclusionary rule under the Charter, which prevents police misconduct by excluding any evidence gathered as a result of an unlawful search and arrest. In Germany, it is tradition for obtained evidence violating the law to be considered inadmissible as per the Rechtsstaat principle, which insists on legal and balanced conduct during criminal investigations. Hence, the strict adherence to this principle rules out illegally obtained evidence in many instances (Fernandes et al., 2024).

**Self-Incrimination**

Protection against Self-incrimination in Canada and Germany, protection against self-incrimination has been entrenched as a fundamental right under their respective legal frameworks, though differently articulated and realized. In Canada, section 11(c) of the Charter of Rights and Freedoms bars compelled testimony, and no individual can be forced to give evidence against himself in any criminal prosecution (Dunn, 2021). This section remains maintained with the presumption of innocence while the accused enjoys the right of silence against their self-incrimination.Canadian courts have repeatedly pointed out and re-asserted this right by referring to the due burden of proof upon the prosecution and preventing defendants from being compelled to furnish evidence against their interests.

In Germany, the Nemo Tenetur principle prevents individuals from being forced into incriminating themselves (Fernandes et al., 2024). It is anchored in national and European Union law and protects an individual's rights from Germany against state coercion. In simpler terms, the right against self-incrimination concerns every testifying or providing evidence by a person against himself ordered by the state. Therefore, this translates to, in practical terms, the right of individuals to silence in interrogations and trials, and the admissibility of whatever has been taken from them through torture is not allowed.

**Right to Counsel**

Another universal human right is the right to an advocate; however, procedures safeguarding this aspect differ in Canada and Germany. Section 10(b) of the Charter of Canada provides the constitutional right of everyone arrested or detained to retain and instruct counsel without delay (Khoday, 2024). This right is crucial because people should know their legal rights and the consequences of their actions during criminal trials. The Canadian courts have amplified the right to counsel in that an accused has to be told about his right to an advocate and then has a right to access legal advice and advice from an attorney before saying anything to the police.

In Germany, legal representation can be seen as crucial in procedural justice, mainly in response to Verständigung (plea agreements). The German legal system highly values and grants enormous authority to the defense counsel when defending the accused during plea bargaining (Jahn & Schmitt-Leonardy, 2020). Unlike in Canada, where plea bargains are less formal, in the German system, any pleas that the prosecution and defense make need to be seen by a judge because the accused rights cannot be infringed, as is the tradition in the country. Legal aid is also helpful in ensuring the non-coercion of any statement made by the accused person.

# Arrest and Interrogation Procedures

In the following section, this paper will analyze how arrest and interrogation procedures are created to safeguard individual rights in both jurisdictions. It will oversee the protection against coercion in Canadian law (Hofman, 2020) and the voluntariness of confessions in German law by the EU human rights regulation (Fernandes et al., 2024).

**1. Canada**

Canadians' legal rights regarding police powers are relatively restricted during arrests and interrogation, which is prohibited from infringing on the right to silence and counsel (Hofman, 2020). This section shall describe how these procedures are applied to ensure that authority is not abused.

**2. Germany**

Organized crime and the German arrest and interrogation process in detail, more so the precondition that requests for voluntary confessions (Fernandes et al., 2024) will be examined. It will also look at how EU regulations influence these standards.

# Court Process

The court organization in the two countries will be compared, focusing on trial typology, the application of the jury system, and the rules for admitting evidence into the trial. The organization of the trial and guarantee of fairness, based on Canada's Common Law tradition (Hickey & Rancourt, 2022) and the German judge Civil Law system (Burchardt, 2020), will be compared.

**1. Canada**

Trial procedures, especially those related to pre-trial motions, evidence, and the choice of juries, will be discussed as practiced in Canada (Hickey & Rancourt, 2022). When evaluating the passages, the focus will be on how these components support applying the defendants' rights.

**2. Germany**

This section covers Germany's legal system, managed mainly by judges rather than juries (Burchardt, 2020). It will discuss the differences between the trial systems in Germany and Canada and any implications for the fairness of criminal procedures.

# Punishments and Sentencing

This section will cover the sentencing practices of Canada and Germany, with particular emphasis on balancing punishment and rehabilitation. The document will portray Canada's sentencing guidelines alongside the judicial powers exercised at their discretion (Hickey & Rancourt, 2022). The core of Canada's sentencing philosophy embodies human dignity and proportionality (Yermek et al., 2020).

**1. Canada**

This section focuses on Canadian sentencing guidelines and judicial discretion (Hickey & Rancourt, 2022). It will cover Canadian sentencing as well as rehabilitation.

2. Germany

This part looks at the sentencing policy of Germany: human dignity and proportionality (Yermek et al., 2020). Moreover, the paper will demonstrate how European human rights norms influence penalty features.

# Extra Constitutional Protections

This section will consider conscientious objection in Canadian health care (Knox & Wagg, p. 2023). Burchardt (2020) will stress the responses of German law to EU human rights standards. This part will also consider the situation with legal developments in Canada (Bernheim & Brosseau, 2023). These talks will reveal how each framework responds to greater human rights situations.

**1. Canada**

The study will examine euthanasia and conscientious objection controversies in Canada, references to the Charter, and an ongoing debate about human rights (Knox & Wagg, 2023). The section will concurrently examine the present status of Canadian legal reforms (Bernheim & Brosseau, 2023). The essential freedoms result from alterations in Canadian laws.

**2. Germany**

In Germany, the integration of EU human rights standards, especially maintaining the critical human right of dignity, will be under review (Burchard, 2020). Considering the influence of the above standards on German law's protective norms, this paper will seek to assess them.

# Conclusion

In conclusion, Canada and Germany offer important constitutional guarantees that empower citizens to limit state power, especially concerning criminal justice. Canada follows the common law legal system that focuses on interpreting laws through the courts. At the same time, Germany employs the civil law system, which relies on codes and statutes and the principles of Rechtsstaat, where much emphasis is placed on legal formalism and legal positivism. The rights to due process, search and seizure, right against self-incrimination, and right to counsel are contained in the Canadian Charter of Rights and Freedom and are subject to extensive protection but are given room for interpretation by the judiciary. In contrast, the Basic Law of Germany offers similar rights but intertwines human dignity with the principles of the rule of law, legal requirements, and proportionality.

Both systems aim to protect individual liberties where suitable Canadian rights may contain a wider margin of appreciation. In this way, the courts can employ constitutional rights in ways and forms that fit the contemporary legal and socio-legal context. On the other hand, Germany relies on legalism, preserving the legal nature of criminal proceedings and excluding previous violations of state power. Therefore, based on this comparative assessment, it will be comprehensible that there is no superior system to the other because each has its pros and cons for a particular country regarding its history, tradition, and legislation. Several comparisons about justice, fairness, and human rights principles are made between the two systems regarding how they are attained.

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