

Human Rights in the Digital Age

I lecture

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Outline

1. Introduction to the International protection of human rights
2. Digitalization and human rights
3. Artificial Intelligence and human rights
4. Covid-19 and human rights





**“the same rights that people have offline
must also be protected online”**

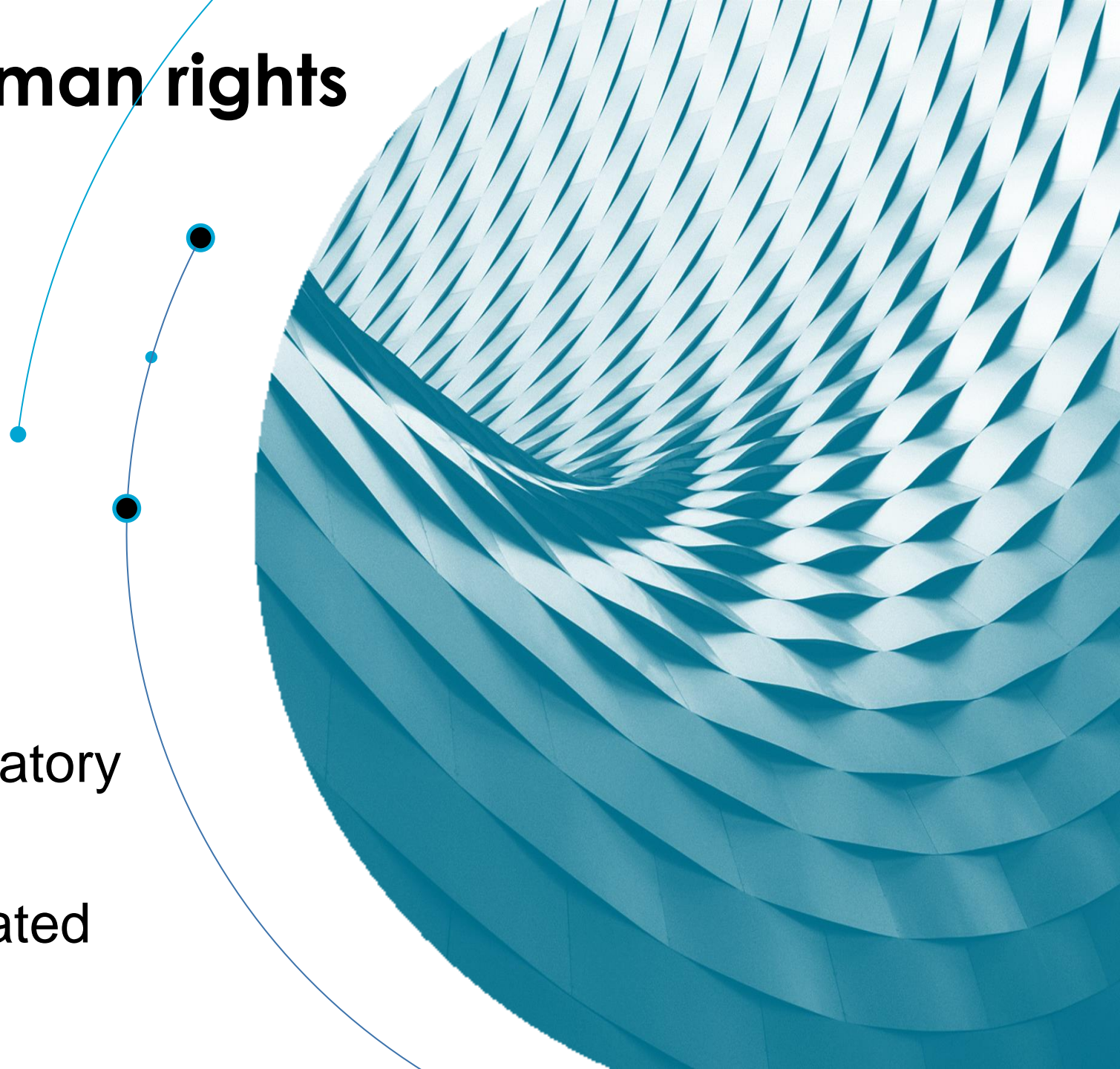
2012 UN Human Rights Council
Resolution

WHAT ARE HUMAN RIGHTS?



Characteristics of human rights

- Universal
- Inherent
- Inalienable
- Equal and non-discriminatory
- Interdependent, interrelated and indivisible



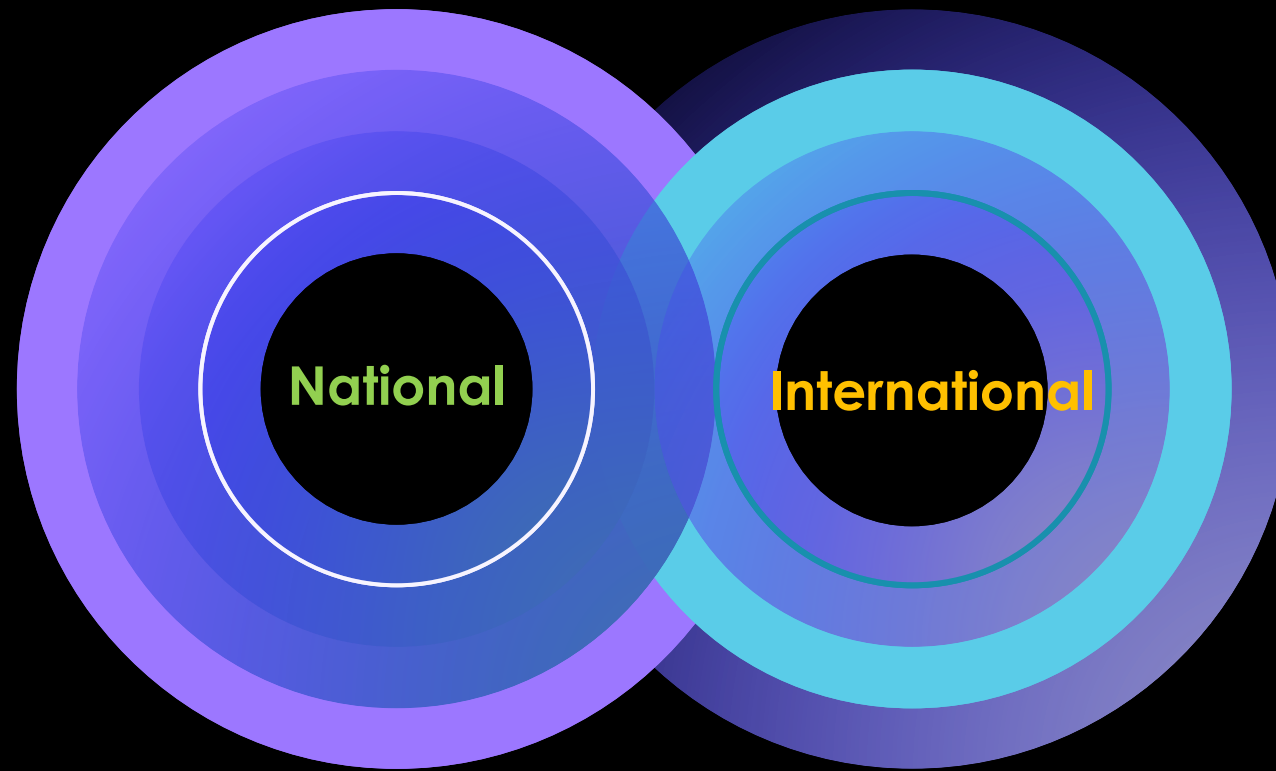


The diagram consists of two large, stylized arrows pointing towards each other, meeting at a central point. The arrow on the left is purple and points to the right. The arrow on the right is red and points to the left. The background is solid black.

Universalism

Cultural relativism

Protection of human rights



Subsidiarity principle: primary obligation to the states to guarantee the rights and freedoms at domestic level

Human Rights generations

1

Civil and Political Rights

- Right to life
- Prohibition of torture
- Freedom of expression
- Right to fair elections
- Etc.

2

Economic, Social and Cultural Rights

- Right to work
- Right to health care
- Right to education
- Protection of property
- Etc.

3

Third Generation (modern, collective...)

- Right to peace
- Right to safe environment
- Right to calm sleep
- Etc.



United Nations

International Bill of Human Rights




X

- Universal Declaration of Human Rights (UDHR, 1948)
- International Covenant on Civil and Political Rights (ICCPR, 1966)
- First Optional Protocol to the ICCPR, recognizing the individual petition right (1966)
- Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1989)
- International Covenant of Economic, Social and Cultural Rights (ICESCR, 1966)
- Optional Protocol to the ICESCR, recognizing the individual petition right (2008)

Universal Conventions

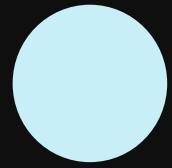
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Conventions elaborating on certain rights

-  Convention on the Prevention and Punishment of the Crime of Genocide (1948)
-  Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
-  International Convention for the Protection of All Persons from Enforced Disappearance (2006)

Conventions dealing with certain categories of persons which may need special protection

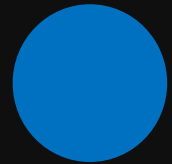
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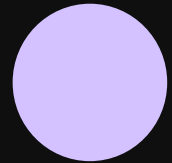
The Convention relating to the Status of Refugees (1951), and the 1967 Protocol thereto



The Convention on the Rights of the Child (1989)



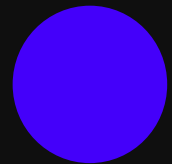
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (2000)



Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)



The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)



The Convention on the Rights of Persons with Disabilities (2006)

Conventions seeking to eliminate discrimination

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979) and its Optional Protocol (2000)

UN Human Rights bodies and mechanisms

Treaty-Based

Committee on the Elimination
of Racial Discrimination

Committee on Economic, Social
and Cultural Rights

Human Rights Committee

Committee on the Elimination of
Discrimination against Women

Committee Against Torture

Committee on the Rights
of the Child

Committee on Migrant Workers

The Subcommittee on Prevention
of Torture and other Cruel,
Inhuman or Degrading Treatment
or Punishment

Committee on the Rights of
Persons with Disabilities

Committee on Enforced
Disappearances

Charter-Based

Human Rights Council

Special Procedures
44 thematic mandates
11 country mandates

Universal Periodic Review

Independent Investigations

Instrument	Individual applications	Inter-State complaints	State reports	Other mechanisms
UDHR	Not available	Not available	Not available	
ICCPR	I Optional Protocol	Art. 41-43 (declaration)	Art. 40	
ICESCR	Optional Protocol	Optional Protocol	Art. 16	Inquires (Opt. Prot.)
CERD	Art. 14 (declaration)	Art. 11-13	Art. 9	
CEDAW	Optional Protocol	Art. 29	Art. 18	Inquires (Art. 8-10 Opt. Prot.)
CAT	Art. 22 (declaration)	Art. 21 (declaration)	Art. 19	Inquires (Art. 20); visits (Opt. Prot.)
CRC	Optional Protocol	Optional Protocol	Art. 44	Inquires (Opt. Prot.)
CRPD	Optional Protocol	Not available	Art. 35	Inquires (Opt. Prot.)
ICPED	Art. 31 (declaration)	Art. 32	Art. 29	
ECHR	Art. 34-35	Art. 33	Not available	
ESC	Not available	Not available	Separate decision	Collective complaints (Additional Prot)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

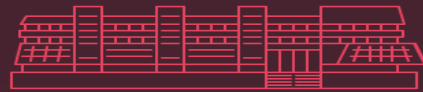
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HUMAN RIGHTS IN EUROPE: EXPLAINER

WHERE DO THEY COME FROM
AND WHO IS PROTECTED?

FOUNDED

1949



COUNCIL OF EUROPE

An organisation of 47 European countries that agree to work together to protect and promote human rights and democracy

DRAFTED

1950



EUROPEAN CONVENTION ON HUMAN RIGHTS

IN FORCE

1953

An international treaty signed by the 47 countries which protects the rights and freedoms of over 820 million people

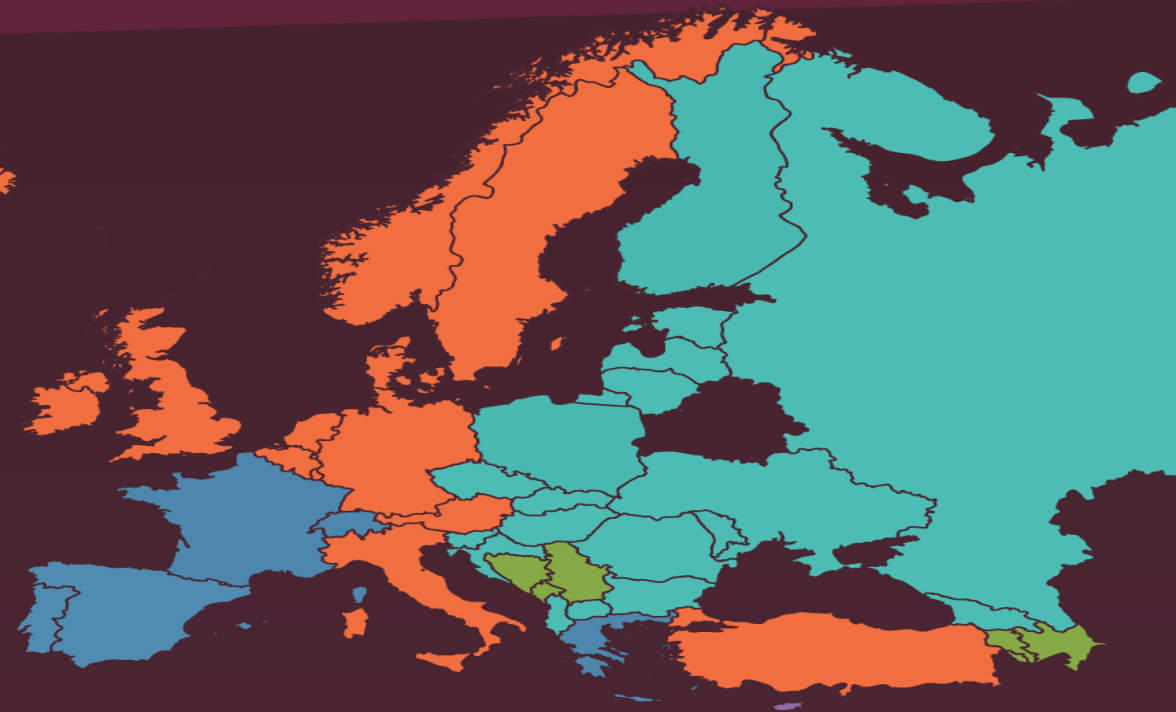
FOUNDED

1959



EUROPEAN COURT OF HUMAN RIGHTS

An international court made up of 47 elected judges (one from each country) that ensures the rights in the Convention are upheld



DECADE EUROPEAN CONVENTION CAME INTO FORCE

1940s 1950s 1960s 1970s 1980s 1990s 2000s

THE LIFE OF A EUROPEAN COURT CASE

BRINGING
A CASE



Anyone can bring a case to the court - 700,000 cases have been brought so far

THE INITIAL
SIFT



Around 85% of cases get struck out by a judge

GOING TO A
FULL JUDGMENT



The cases that make it through are then decided on by a panel of judges



Council of Europe

47 Member States



Following the decision of the Committee of Ministers on 16 March 2022 the Russian Federation is no longer a member of the Council of Europe



Council of Europe

An international organisation in Strasbourg which comprises 47 countries of Europe. It was set up to promote democracy and protect human rights and the rule of law in Europe.



European Council

Institution of the European Union, consisting of the heads of state or government from the member states together with the President of the European Commission, for the purpose of planning Union policy.



European Union (EU)

The EU currently has 28 members that have delegated some of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level. No country has ever joined the EU without first belonging to the Council of Europe.



European Court of Human Rights

Based in Strasbourg, this is the only truly judicial organ established by the European Convention on Human Rights. It is composed of one Judge for each State party to the Convention and ensures, in the last instance, that contracting states observe their obligations under the Convention. Since November 1998, the Court has operated on a full-time basis.



International Court of Justice

Judicial body of the United Nations, which is based in The Hague.



Court of Justice of the European Union

Based in Luxembourg and ensures compliance with the law in the interpretation and application of the European Treaties of the European Union.

European Convention on Human Rights



ECHR

European Court of Human Rights

1

THE STATE'S
OBLIGATION TO
RESPECT
HUMAN RIGHTS



2

RIGHT
TO LIFE



3

RIGHT NOT TO
BE TORTURED



4

RIGHT NOT TO
BE ENSLAVED



5

RIGHT TO NOT BE
UNLAWFULLY
DETAINED



6

RIGHT TO A
FAIR TRIAL



7

NO PUNISHMENT
WITHOUT LAW



8

RIGHT TO FAMILY
AND PRIVATE LIFE



9

RIGHT TO FREEDOM
OF THOUGHT,
CONSCIENCE
AND RELIGION



10

RIGHT TO
FREE EXPRESSION



11

RIGHT TO FREE
ASSOCIATION



12

RIGHT TO MARRY



13

RIGHT TO AN
EFFECTIVE REMEDY
IF YOUR RIGHTS
ARE BREACHED



14

RIGHT NOT TO BE
DISCRIMINATED
AGAINST



Protocol 1 Article 2

RIGHT TO
EDUCATION



Protocol 1 Article 3

RIGHT TO FREE
AND FAIR ELECTIONS



Protocol 1 Article 1

RIGHT TO
PEACEFUL ENJOYMENT
OF PROPERTY



ECHR as a 'living instrument'

This principle allows the court “to expand Convention rights into new areas, and certainly beyond what the framers of the Convention had in mind when they signed up to it.”

Proceedings at national level

Beginning of the dispute



Proceedings before the national courts



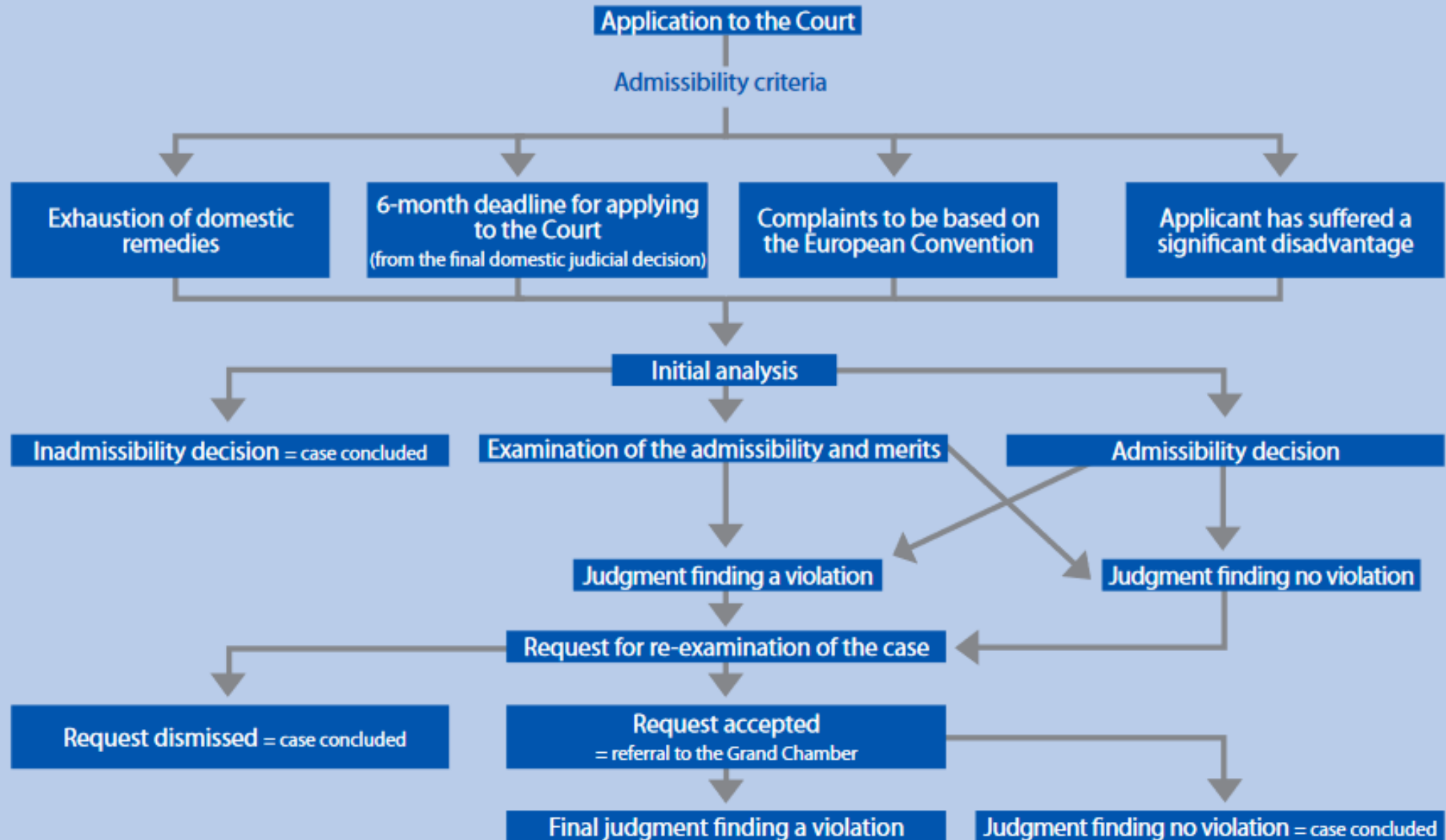
Exhaustion of domestic court



Decision of the highest domestic court



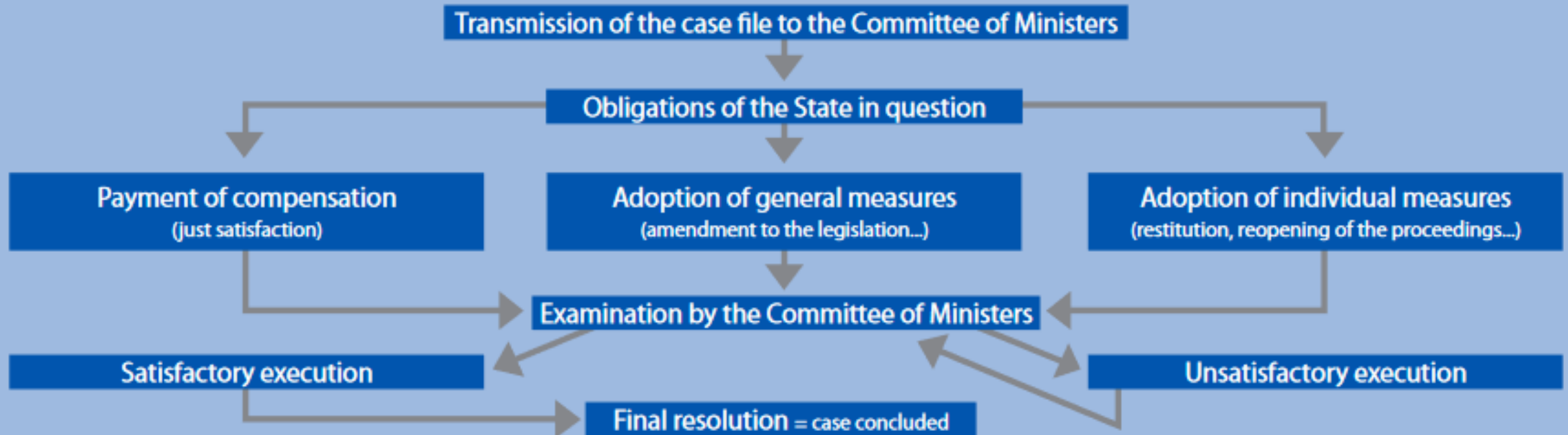
Proceedings before the European Court of Human Rights



Simplified case-processing flow chart by judicial formation



Execution of judgment



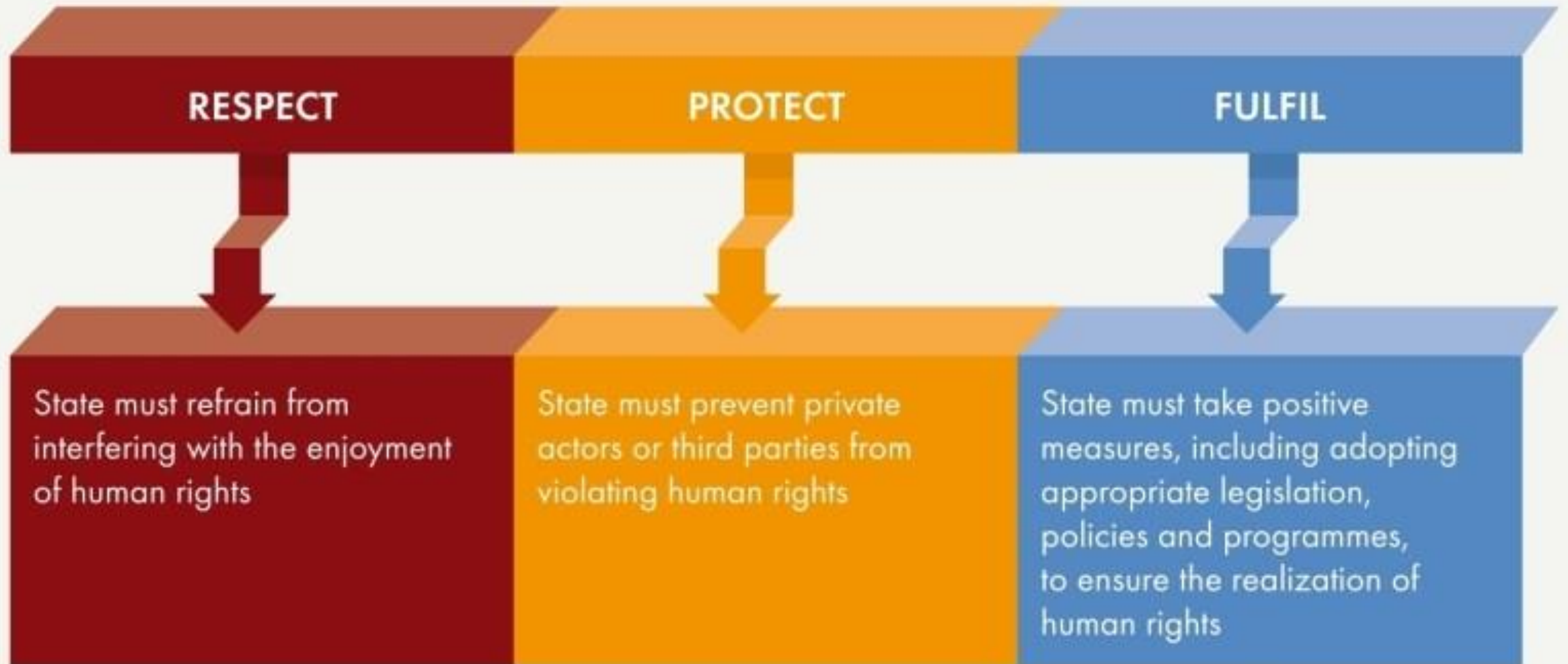
More about the European Court of Human Rights:

<https://www.echr.coe.int/Pages/home.aspx?p=court/judges&c>



State obligations

State obligations



Margin of appreciation

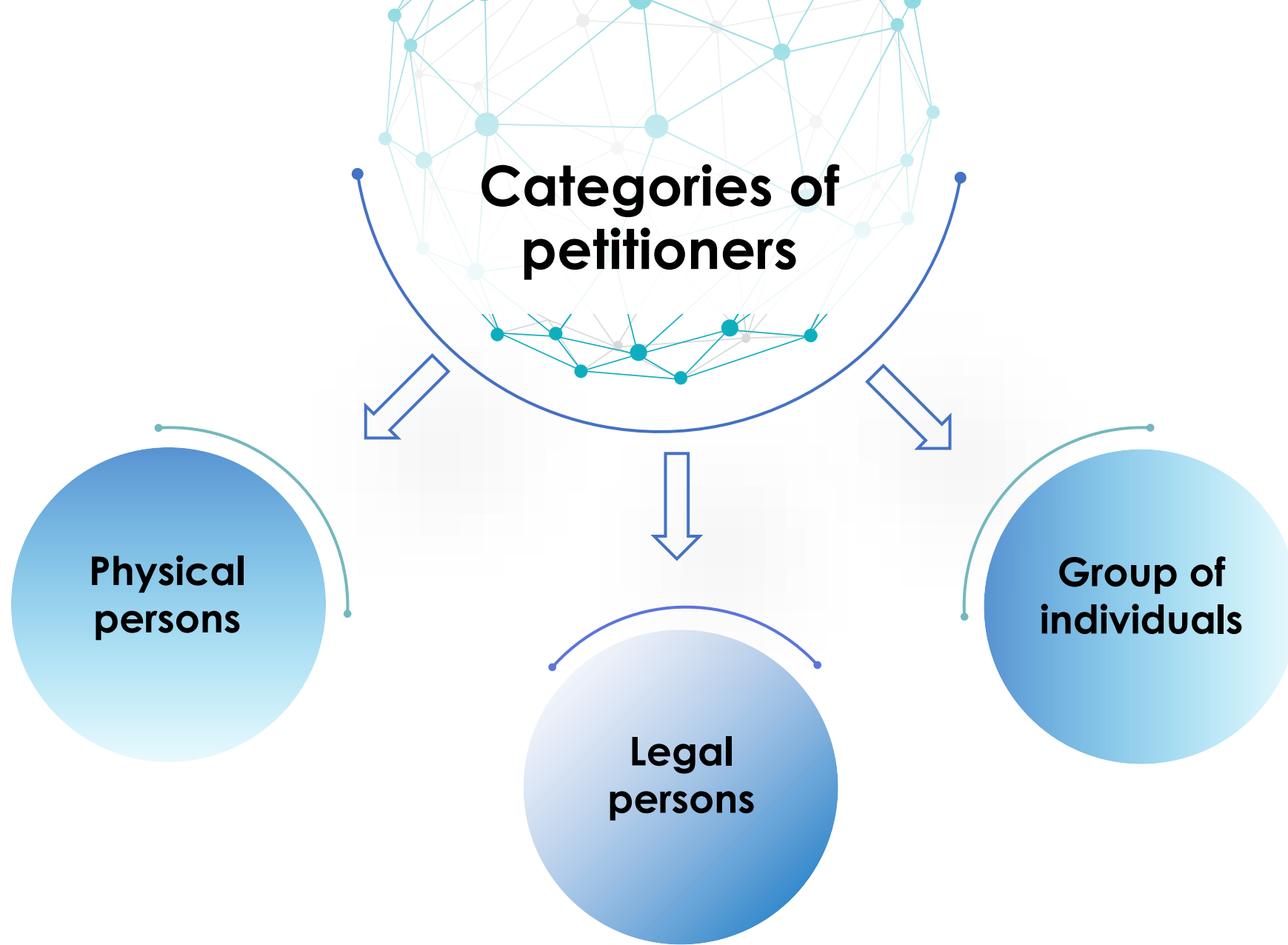
Contracting Parties enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention, account being taken of the needs and resources of the community and of individuals

National authorities are better positioned than an international court to assess the social developments and possible implications

States must strike a fair balance between the competing interests



Admissibility criteria



PROCEDURAL GROUNDS FOR INADMISSIBILITY



Non-exhaustion of domestic remedies



Non-compliance with 4 months time-limit (until 01.02.2022 6 months)



Anonymous application

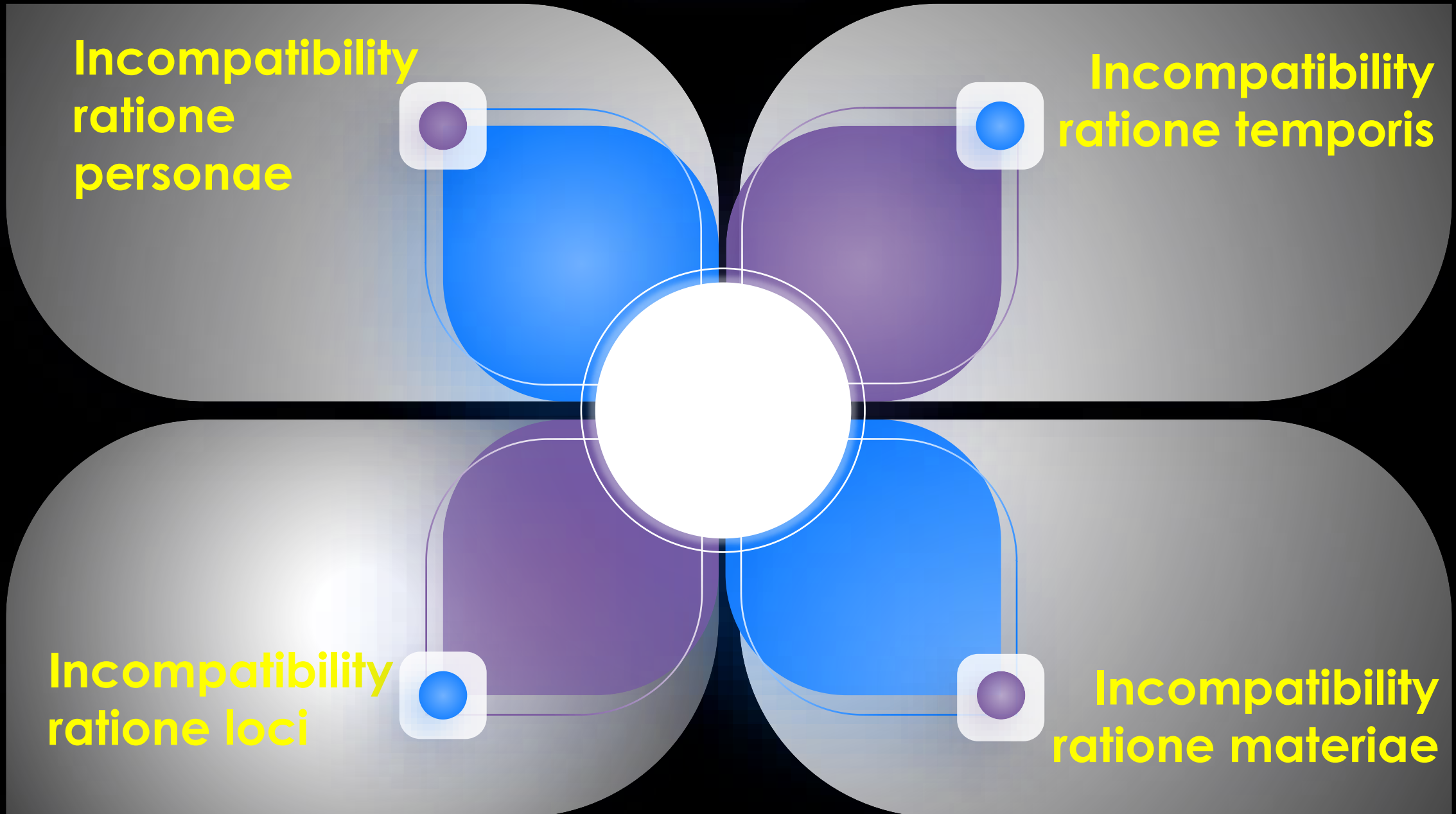


Substantially the same



Abuse of the right of application

Grounds for inadmissibility relating to the Court's jurisdiction



ECHR ARTICLE 58: Denunciation

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

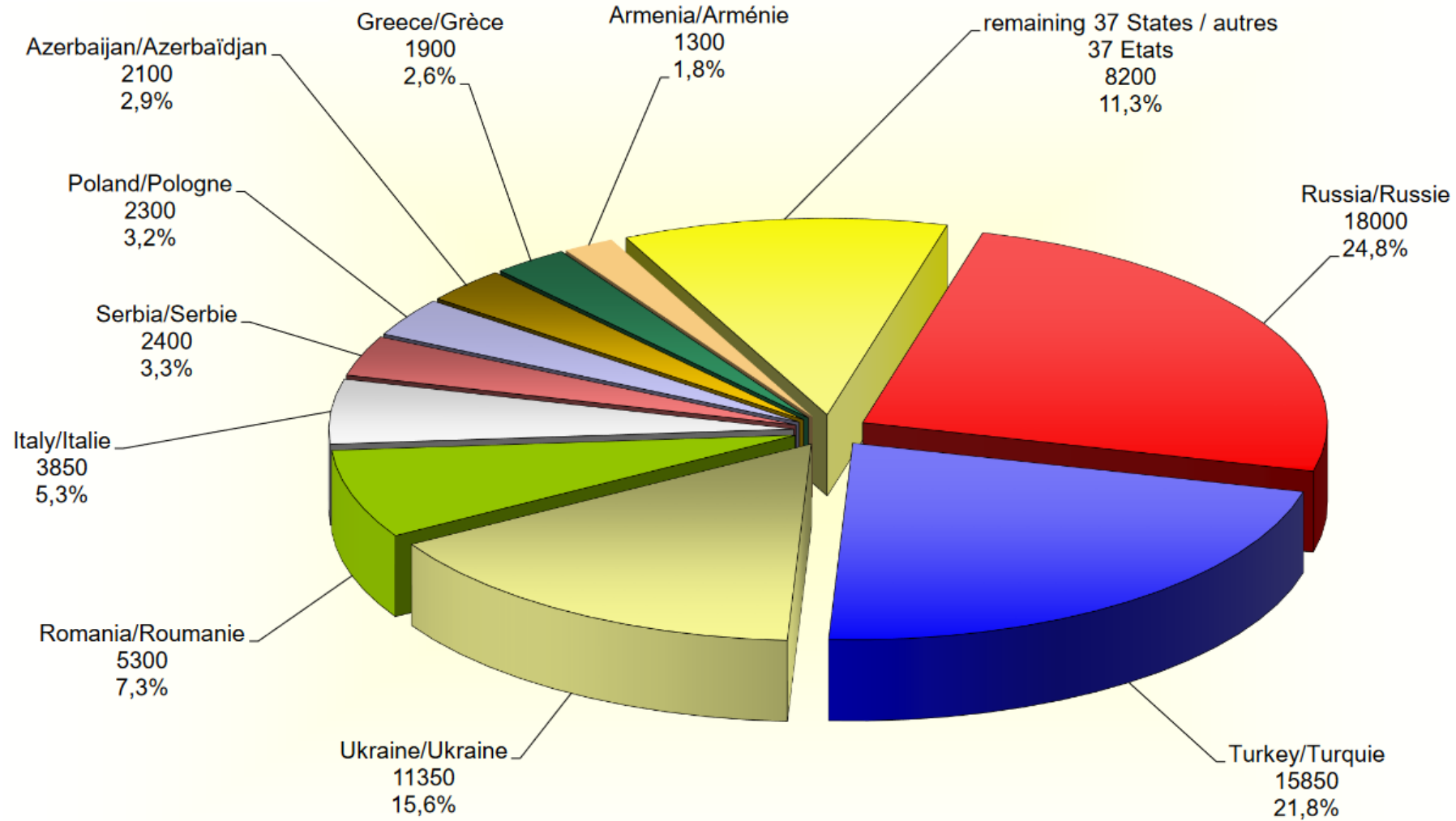


**Inadmissibility
based on the
merits**

**Manifestly
ill-founded**

**No significant
disadvantage**

PENDING APPLICATIONS ALLOCATED TO A JUDICIAL FORMATION
REQUÊTES PENDANTES DEVANT UNE FORMATION JUDICIAIRE
28/02/2022



Total number of pending applications: 72,550
Nombre total des requêtes pendantes : 72 550

EU CHARTER OF FUNDAMENTAL RIGHTS

When does it apply and where to go in case of violation?

THE CHARTER DOES NOT APPLY

Fundamental rights are guaranteed by national constitutional systems and obligations under the European Convention on Human Rights.

When the alleged fundamental rights violation does not involve the implementation of EU legislation, the Charter does not apply.

NATIONAL COURTS

EUROPEAN COURT OF HUMAN RIGHTS

STRASBOURG



ALLEGED FUNDAMENTAL RIGHTS VIOLATION BY A MEMBER STATE

When the alleged fundamental rights violation involves the implementation of EU legislation, the Charter applies.

(e.g. a national authority applies an EU regulation)

NATIONAL COURTS

REFERRAL BY NATIONAL COURT



EUROPEAN COMMISSION



COURT OF JUSTICE OF THE EUROPEAN UNION
LUXEMBOURG

Ruling on the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms

THE CHARTER APPLIES

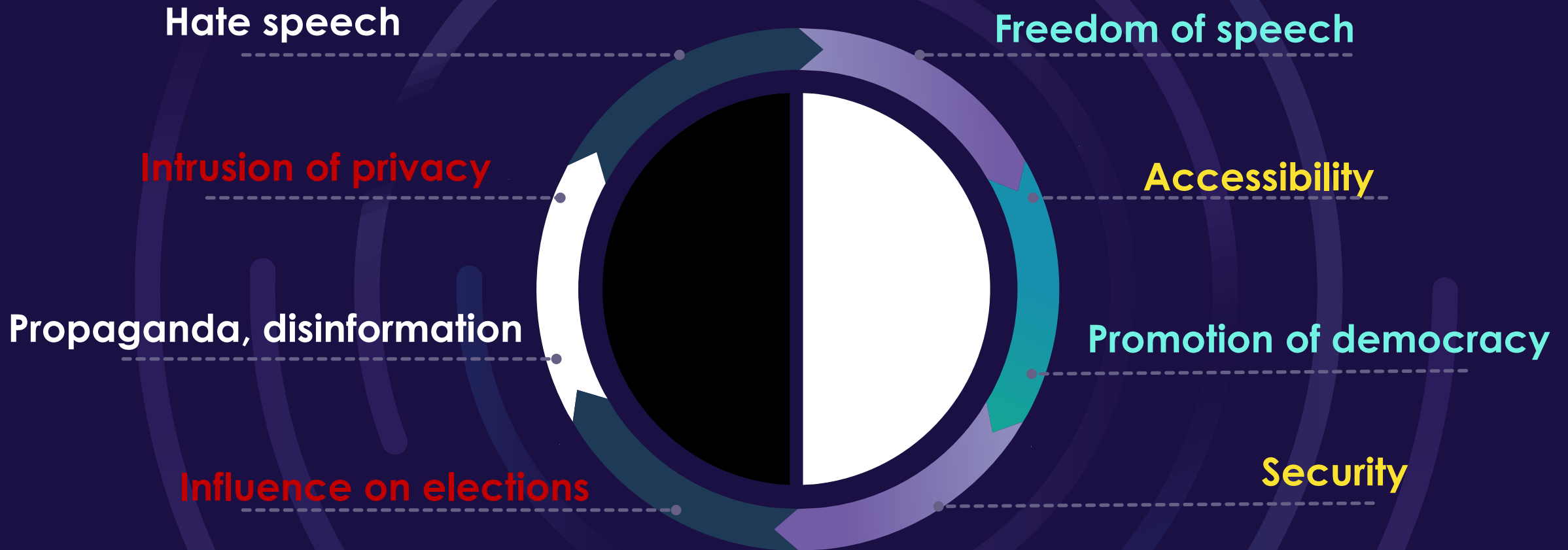
INFRINGEMENT PROCEDURE



Digitalization and human rights



Digitalization and human rights



Digital technologies provide new means to exercise human rights,
but they are too often also used to violate them

European Declaration on Digital Rights and Principles for the Digital Decade

Solidarity and Inclusion

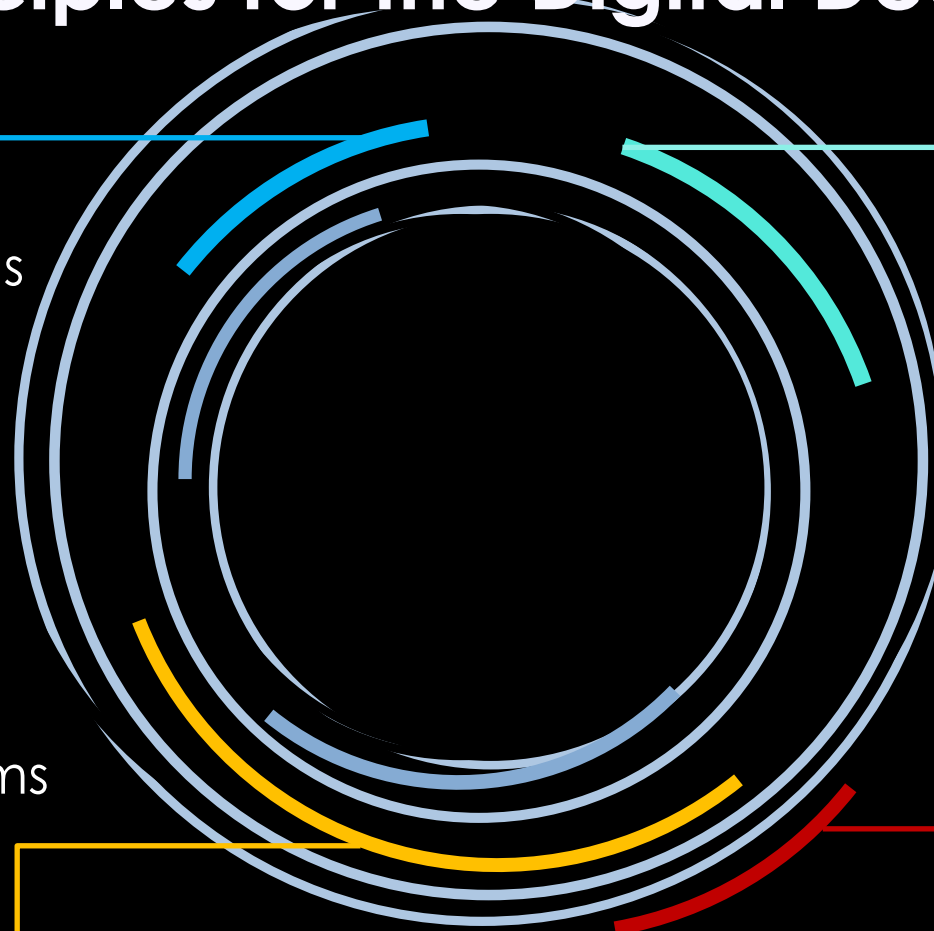
- Connectivity
- Digital education and skills
- Working conditions
- Digital public services online
- Interactions with algorithms and artificial intelligence systems
- A fair online environment

Freedom of choice

Participation in the digital public space

- Access to a trustworthy, diverse and multilingual online environment
- A protected, safe and secure online environment
- Privacy and individual control over data
- Children and young people should be protected and empowered online


Safety, security and empowerment





Artificial Intelligence and human rights





“Artificial intelligence can be a force for good, helping societies overcome some of the great challenges of our times. But AI technologies can have negative, even catastrophic, effects if they are used without sufficient regard to how they affect people’s human rights”.

Michelle Bachelet, UN High Commissioner for Human Rights



Facial recognition technologies

Mass surveillance

Strengthened discrimination



A CCTV display using the facial-recognition system Face in Beijing.
(Gilles Sabrié / The Washington Post)

Contact tracing

Contact tracing helps to

Identify times and places where people have had contact with someone who has COVID-19

Inform people who might have been exposed

Isolate people with COVID-19 to prevent further spread



Contact Tracing Apps

- 120 contact tracing mobile apps are available in 71 countries
- 45 mobile apps now use Google and Apple's API. 75 don't use the API, with potentially greater risk for data privacy
- The U.S. has 23 apps, more than any other country in the world
- 19 apps, with 4 million downloads combined, have no privacy policy and thus no expectation of data privacy

<https://www.top10vpn.com/research/covid-19-digital-rights-tracker/>



COVID-19 and human rights



“While the virus is resulting in the tragic loss of life, we must nonetheless prevent it from destroying our way of life - our understanding of who we are, what we value, and the rights to which every European is entitled. There is an urgent need to co-ordinate states’ responses, to exchange good practices, and to help each other in the quest for a quicker recovery.”

Marija Pejčinović Burić, Secretary General of the Council of Europe



Fair balance?

Human rights

v.

Interests of society




European Convention on Human Rights

Article 15

Article 15 of the European Convention on Human Rights allows contracting states to derogate from certain rights guaranteed by the Convention in a time of "war or other public emergency threatening the life of the nation,,

Permissible derogations under article 15 must meet three substantive conditions:

1. there must be a public emergency threatening the life of the nation;
2. any measures taken in response must be "strictly required by the exigencies of the situation"; and
3. the measures taken in response to it must be in compliance with a state's other obligations under international law.



“At its best, the digital revolution will empower, connect, inform and save lives. At its worst, it will disempower, disconnect, misinform and cost lives.”

Michelle Bachelet, UN High Commissioner for Human Rights





THANK YOU
QUESTIONS?

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