



Training of Lawyers on EU Instruments on procedural rights in Criminal proceedings (CRIMILAW)

European Public Prosecutor's Office and Defence Rights

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European Prosecutors' office and defence rights

AVV. NICOLA CANESTRINI

16TH DECEMBER 2021

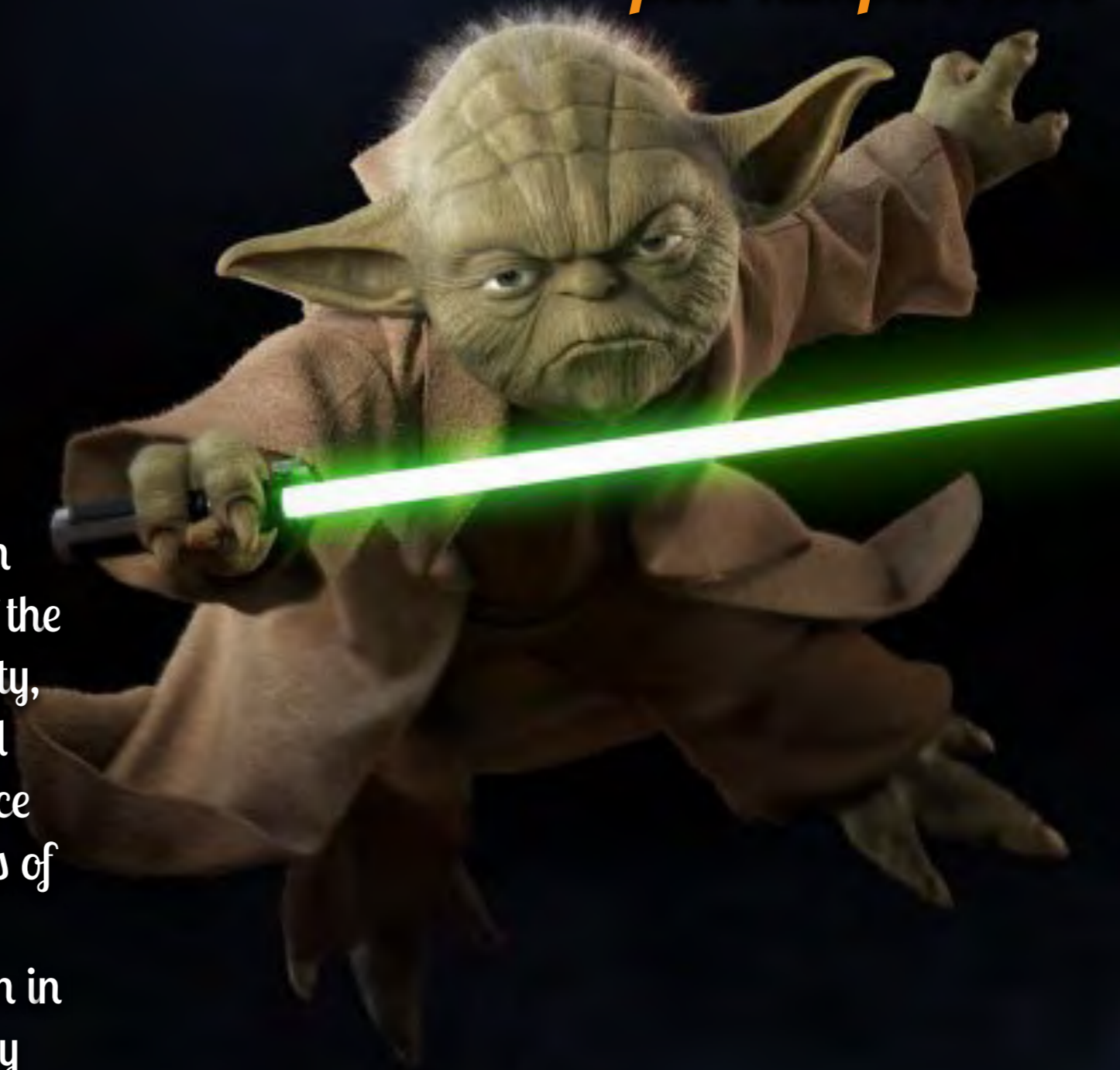
canestrinilex.com

*European Lawyers Foundation ELF,
CRIMLAW-4th online training*

“The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.” (art 67 TFEU)

*area
FSJ
post Tampere 1999*

“the principle of mutual recognition is founded on mutual trust developed through the shared values of the Member States concerning respect for human dignity, freedom, democracy, equality, the rule of law and human rights, so that each authority has confidence that the other authorities apply equivalent standards of protection of rights across their criminal justice systems.” “Council conclusions on mutual recognition in criminal matters ‘Promoting mutual recognition by enhancing mutual trust’ 2018/C 449/02)



*area
FSJ*

post Tampere 1999

mutual
recognition
principle

trust

rights



A close-up photograph of three LEGO Star Wars minifigures. On the left is Han Solo, with his characteristic brown hair and beard, wearing a tan jacket. In the center is a T-Rex minifigure, colored in shades of brown and tan, with its mouth open. On the right is Leia Organa, wearing her signature black dress and red mask. The background is a dark, textured surface, possibly a wall or a backdrop. A semi-transparent grey box is overlaid on the left side of the image, containing white text.

Sufficient fundamental rights protection
post *EPPO acquis communautaire*
and / or national safeguards?

Whereas 83 This Regulation requires the EPPO to respect, in particular, the right to a fair trial, the rights of the defence and the presumption of innocence, as enshrined in Articles 47 and 48 of the Charter. Article 50 of the Charter, which protects the right not to be tried or punished twice in criminal proceedings for the same offence (*ne bis in idem*), ensures that there will be no double jeopardy as a result of the prosecutions brought by the EPPO.

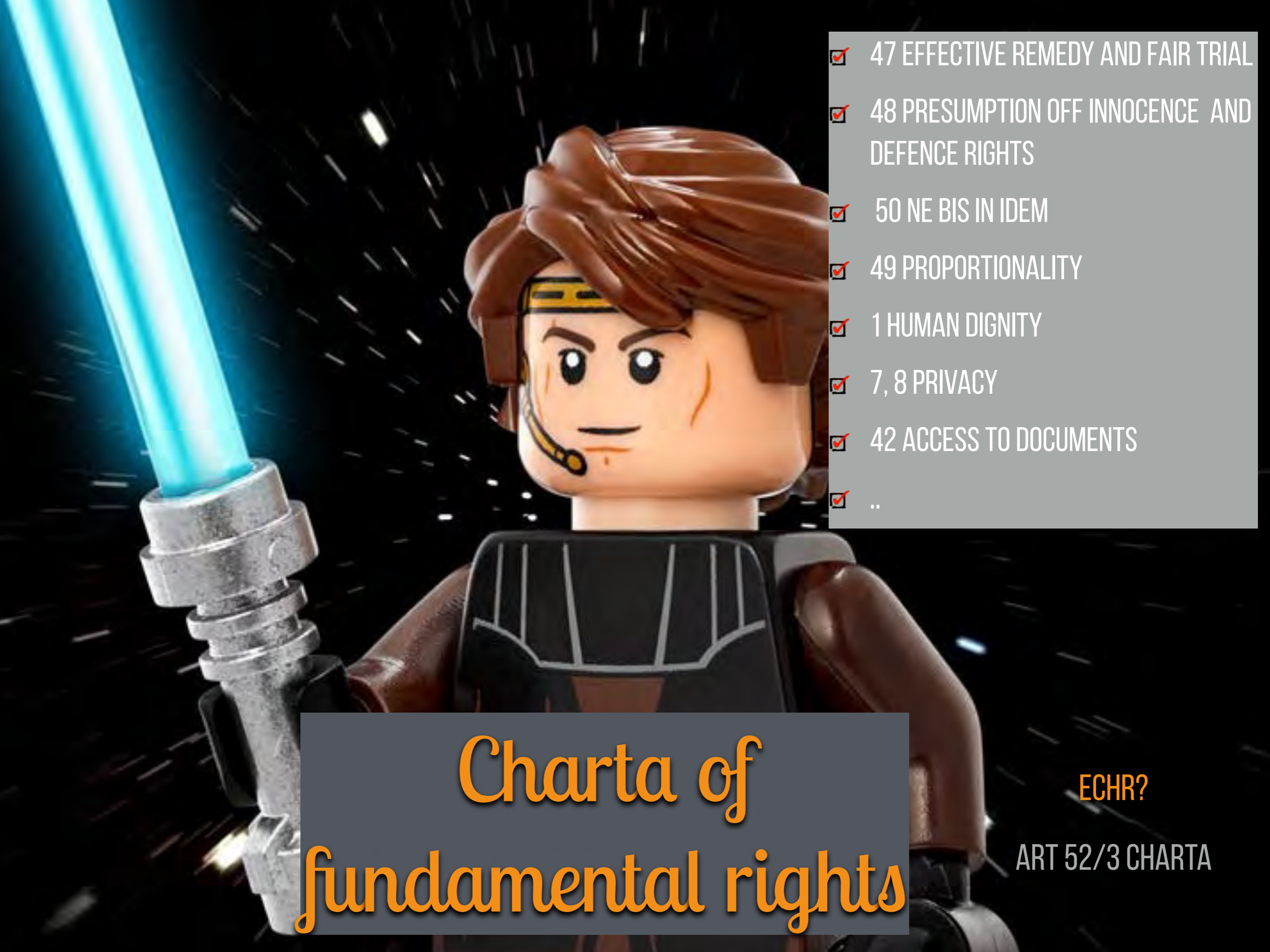
Article 5 The EPPO shall ensure that its activities respect the rights enshrined in the Charter. and shall be bound by the principles of rule of law and proportionality in all its activities.

Article 41 The activities of the EPPO shall be carried out in full compliance with the rights of suspects and accused persons enshrined in the Charter, including the right to a fair trial and the rights of defence. . Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union (...). 3. Without prejudice to the rights referred to in this Chapter, suspects and accused persons as well as other persons involved in the proceedings of the EPPO shall have all the procedural rights available to them under the applicable national law (...)



EPPO

Council regulation(EU) 2017/1939 12 October
2017 implementing enhanced cooperation on
establishing an European public prosecutors office
(«EPPO»)

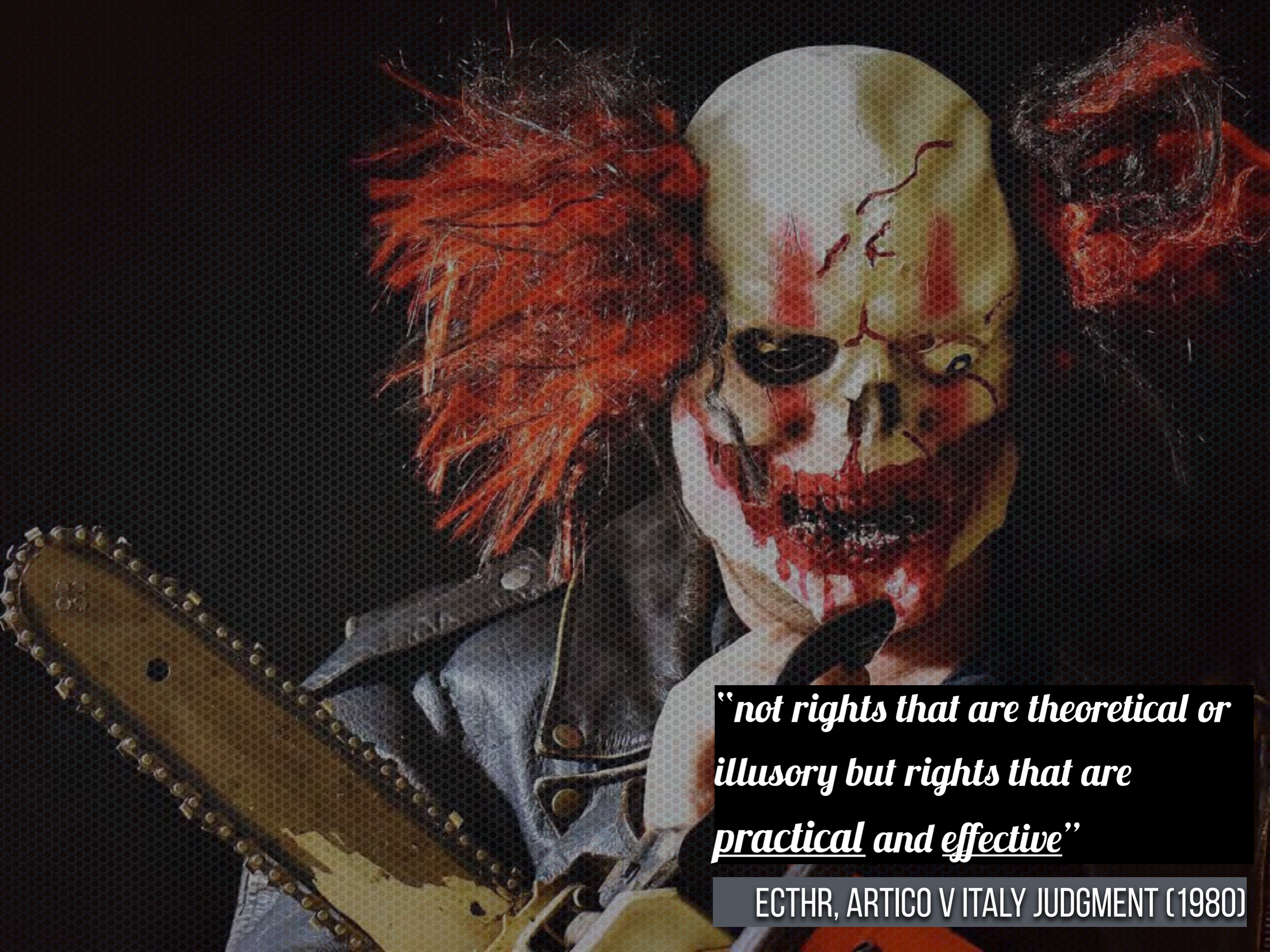


- ✓ 47 EFFECTIVE REMEDY AND FAIR TRIAL
- ✓ 48 PRESUMPTION OF INNOCENCE AND DEFENCE RIGHTS
- ✓ 50 NE BIS IN IDEM
- ✓ 49 PROPORTIONALITY
- ✓ 1 HUMAN DIGNITY
- ✓ 7, 8 PRIVACY
- ✓ 42 ACCESS TO DOCUMENTS
- ✓ ..

Charta of fundamental rights

ECHR?

ART 52/3 CHARTA



“not rights that are theoretical or illusory but rights that are practical and effective”

ECTHR, ARTICO V ITALY JUDGMENT (1980)

*Presumption of
innocence*

(Dir (UE) 2016/343)

*Right to Interpretation
and Translation*

(Dir 2010/64/UE)

Procedural directives

*(Stockholm program - Swedish
Procedural Rights Roadmap)*

*Right to
Information*

(Dir 2012/13/UE)

Legal aid

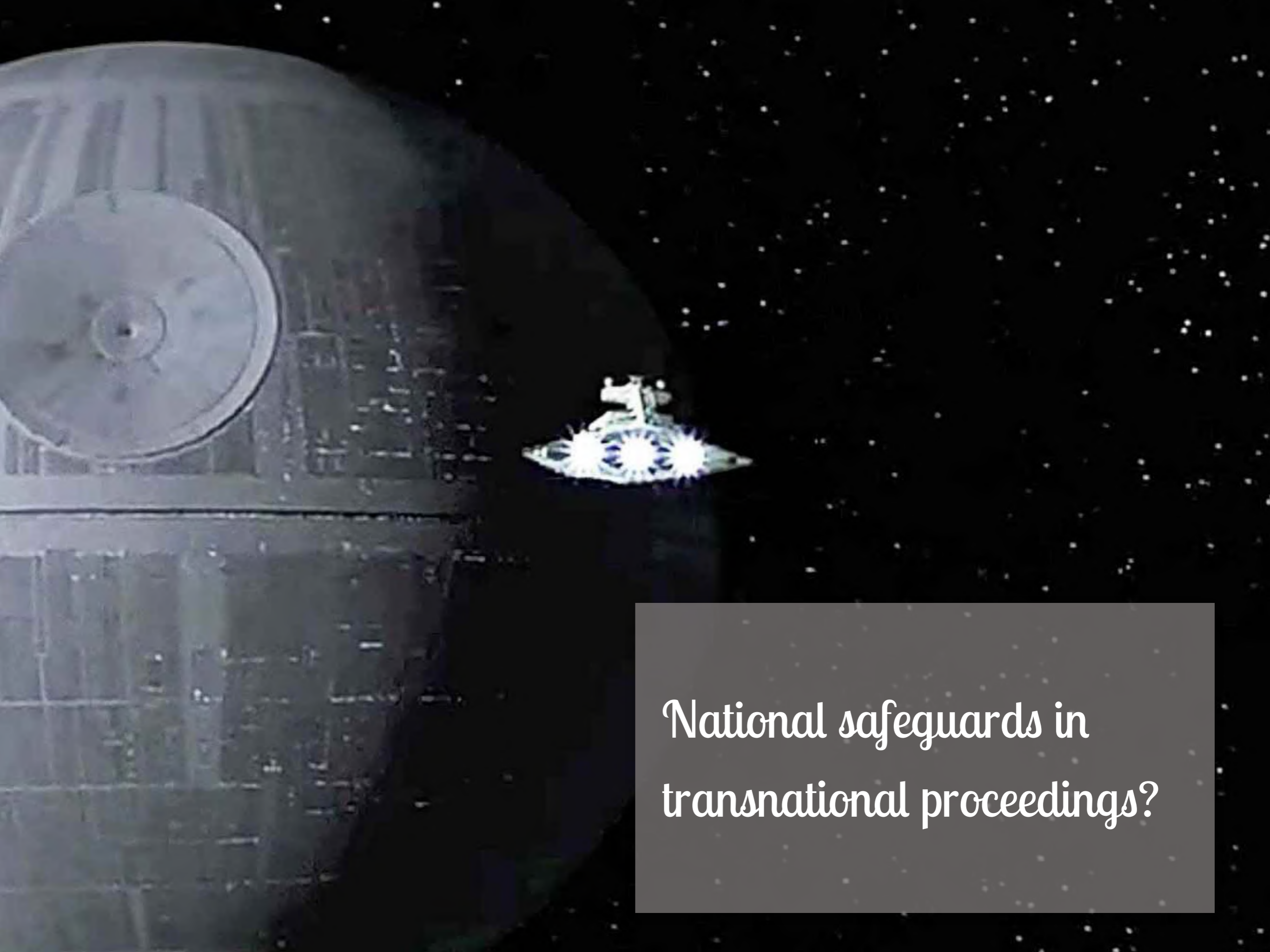
*(Dir (UE)
2015/1919)*

Access to a Lawyer

(Dir 2013/48/UE)

“Any suspected or accused person in the criminal proceedings of the EPPO shall, at a minimum, have the procedural rights provided for in Union law, including directives concerning the rights of suspects and accused persons in criminal procedures, as implemented by national law” (art. 41/2)





National safeguards in
transnational proceedings?

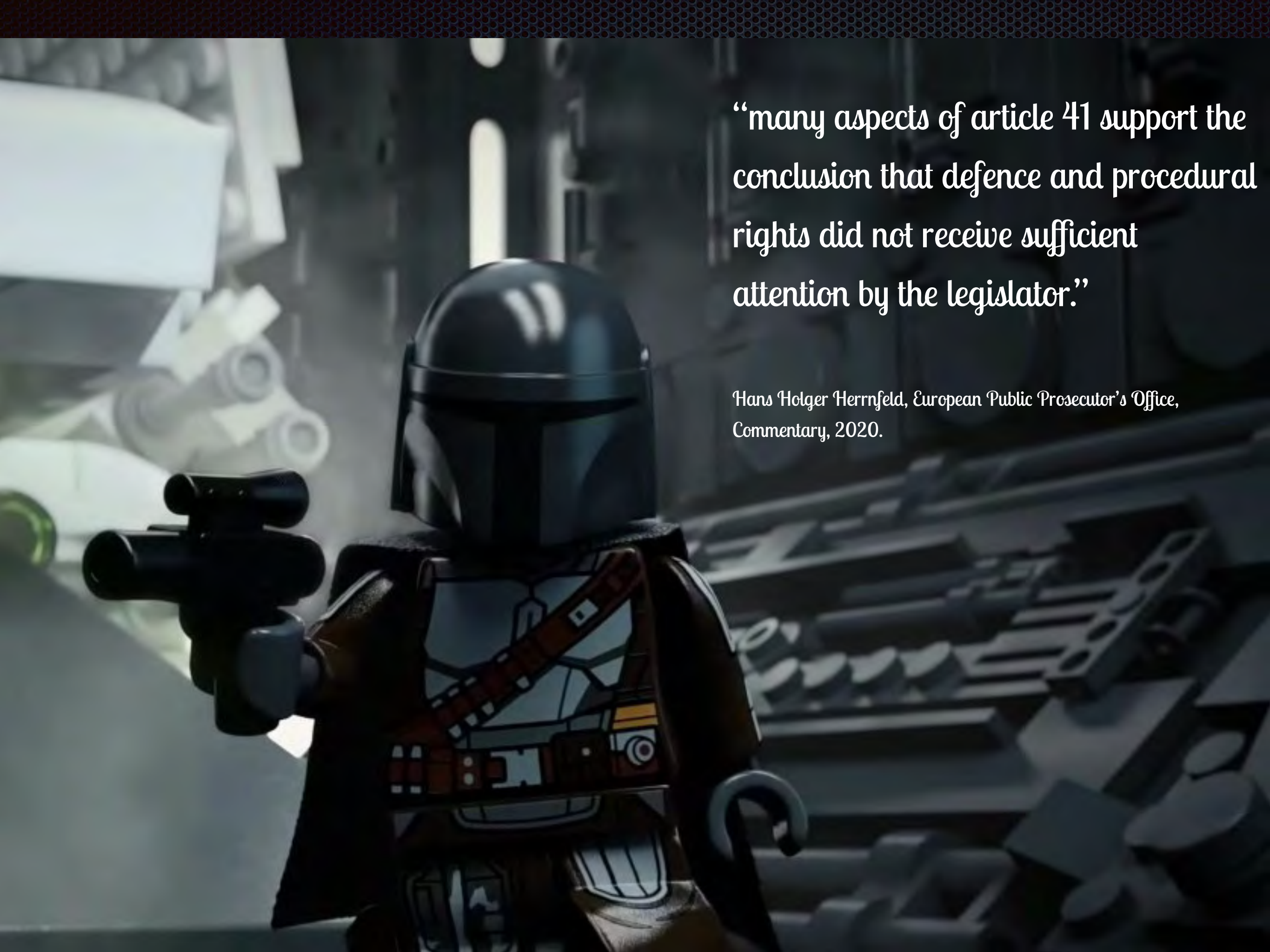


access to case file

forum shopping

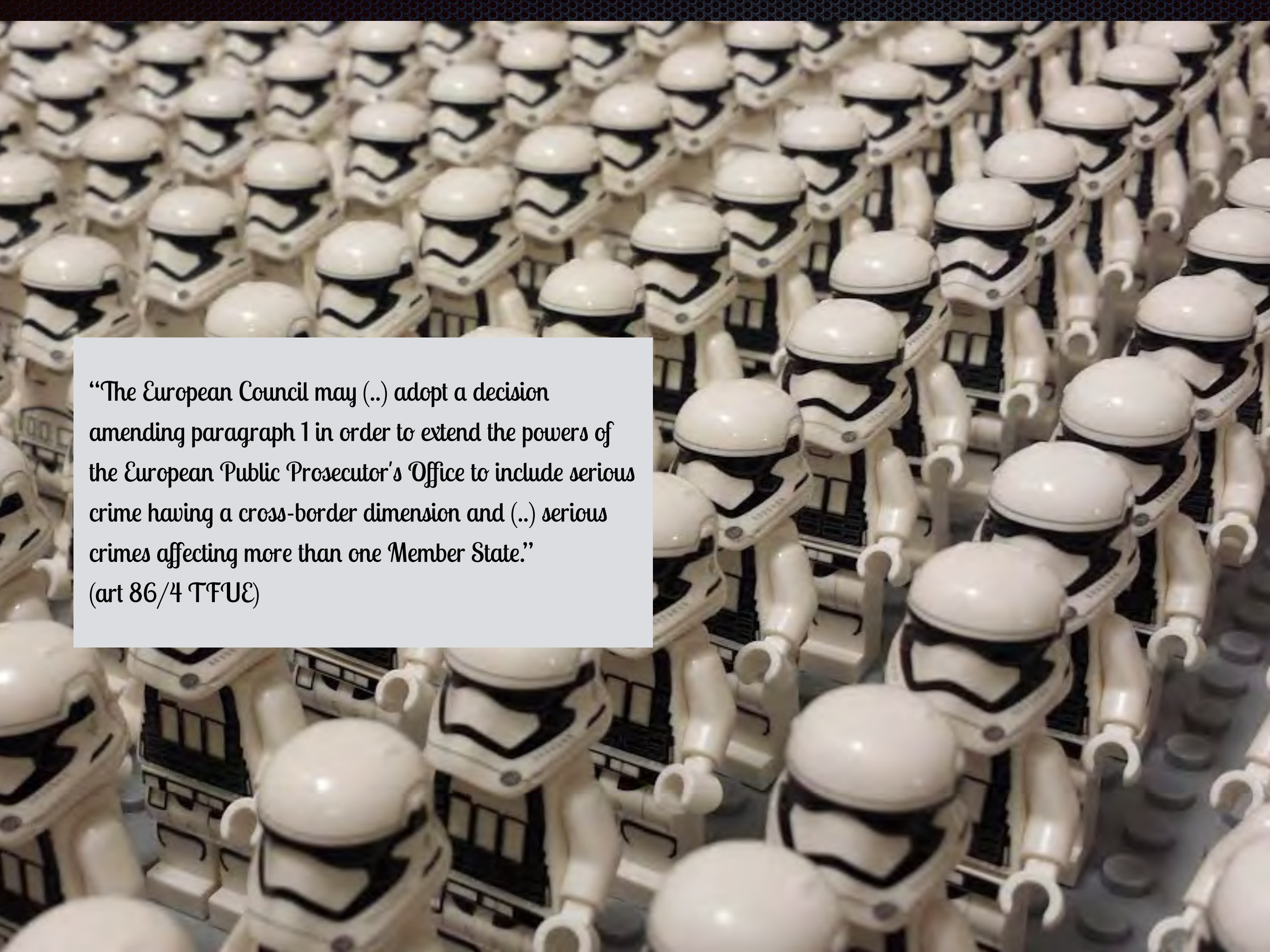
*No involgente of defense for key decisions
(artt. 26, 35, 40)*

equality of arms



“many aspects of article 41 support the conclusion that defence and procedural rights did not receive sufficient attention by the legislator.”

Hans Holger Herrnfeld, European Public Prosecutor's Office, Commentary, 2020.



*“The European Council may (..) adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor’s Office to include serious crime having a cross-border dimension and (..) serious crimes affecting more than one Member State.”
(art 86/4 TFEU)*

What does history teach
us?





Office of the Attorney General
Washington, D.C.

July 26, 1908.

ORDER

All matters relating to investigations under the Department, except those to be made by bank examiners, and in connection with the naturalization service, will be referred to the Chief Examiner for a memorandum as to whether any member of the force of special agents under his direction is available for the work to be performed. No authorization of expenditure for special examinations shall be made by any officer of the Department, without first ascertaining whether one of the regular force is available for the service desired, and, in case the service cannot be performed by the regular force of special agents of the Department, the matter will be specially called to the attention of the Attorney General, or Acting Attorney General, together with a statement from the Chief Examiner as to the reasons why a regular employee cannot be assigned to the work, before authorization shall be made for the expenditure of any money for this purpose.

CHARLES J. BOKAPARTZ,
Attorney General.

MAPPING THE FBI

Uncovering Abusive Surveillance and Racial Profiling

Photo: Shutterstock/Mark Van Scyoc




The Federal Bureau of Investigation is collecting racial and ethnic information and “mapping” American communities around the country based on crude stereotypes about which groups commit different types of crimes. Nationwide, the FBI is gathering reports on innocent Americans’ so-called “suspicious activity” and sharing it with unknown numbers of federal, state and local government agencies.



“The unquestionable and growing needs of the fight against crime on the international level, while urging an increasingly effective and loyal cooperation between States, cant in any case go against the values that the Constitution declares inviolable.”

ITALIAN CONSTITUTIONAL COURT, 280/1985





*"Those who would give up
essential Liberty, to purchase a
little temporary Safety, deserve
neither Liberty nor Safety."*

BENJAMIN FRANKLIN, 1755



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