

# **European Approach to HR CSCE/OSCE Council of Europe**

**EGO402 EU Law and European System of HR  
Protection**

Hubert Smekal

([hsmekal@fss.muni.cz](mailto:hsmekal@fss.muni.cz))

27 September 2016

Why do states sign/ratify HR treaties?

Why do I ask?

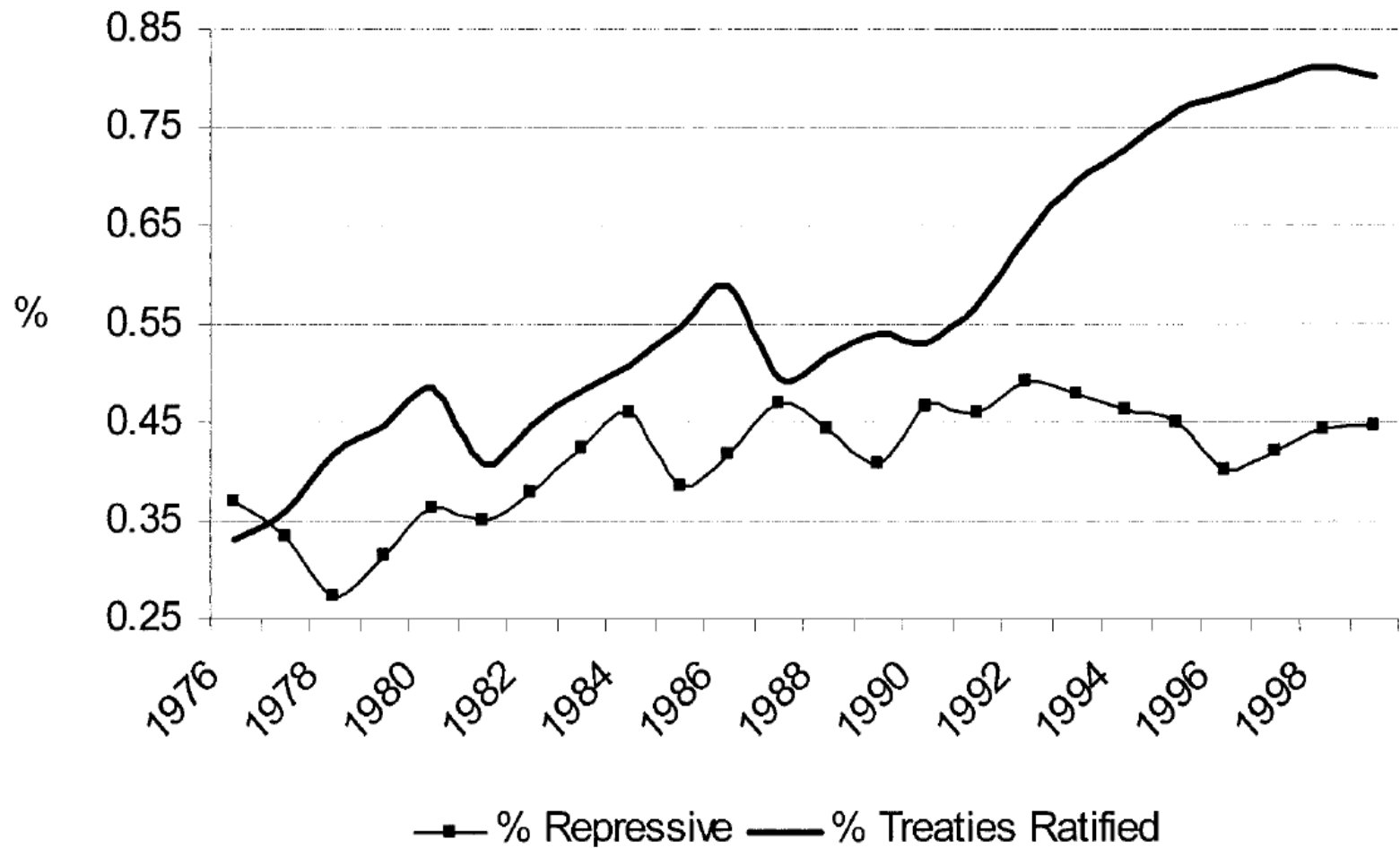
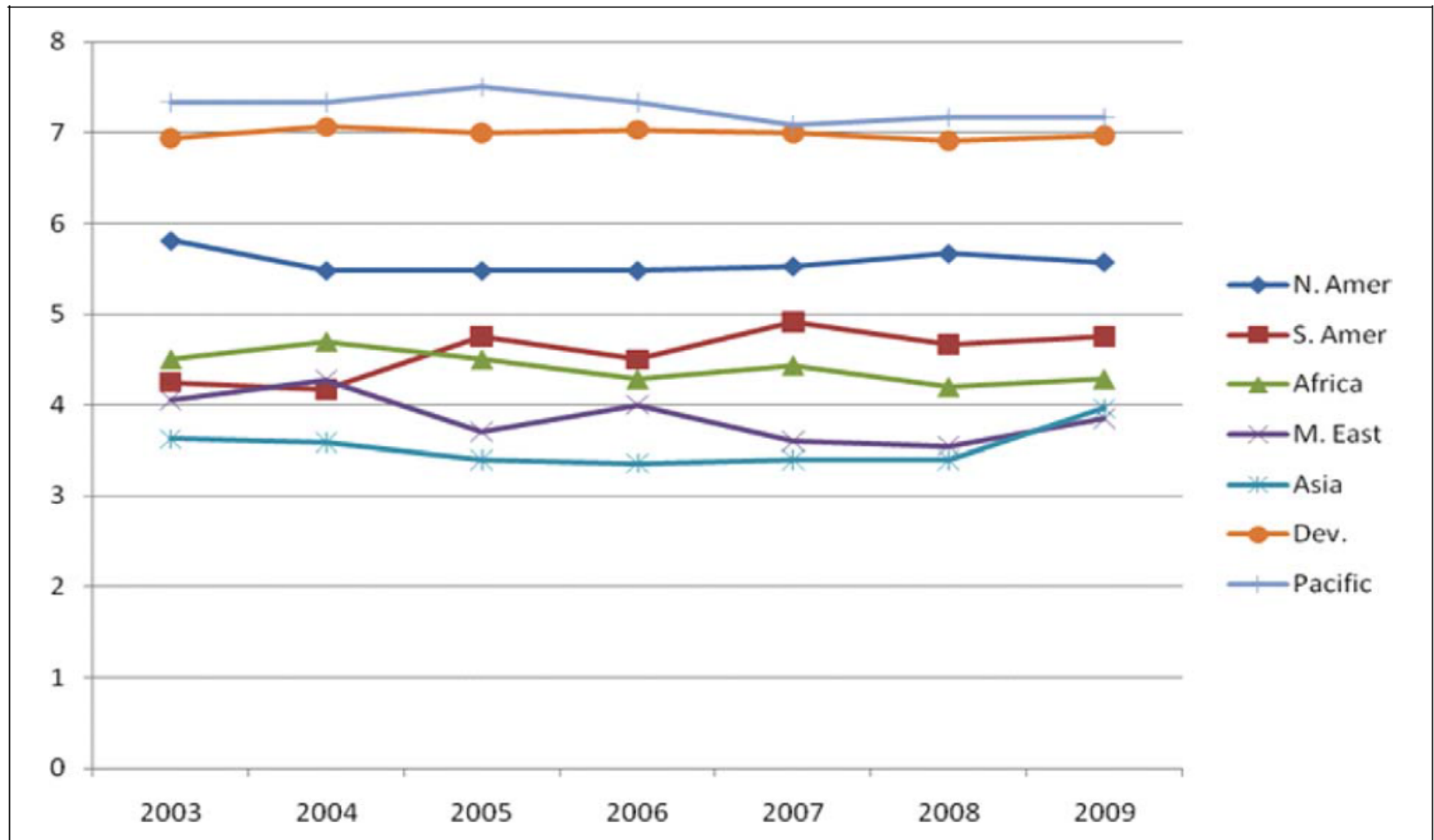


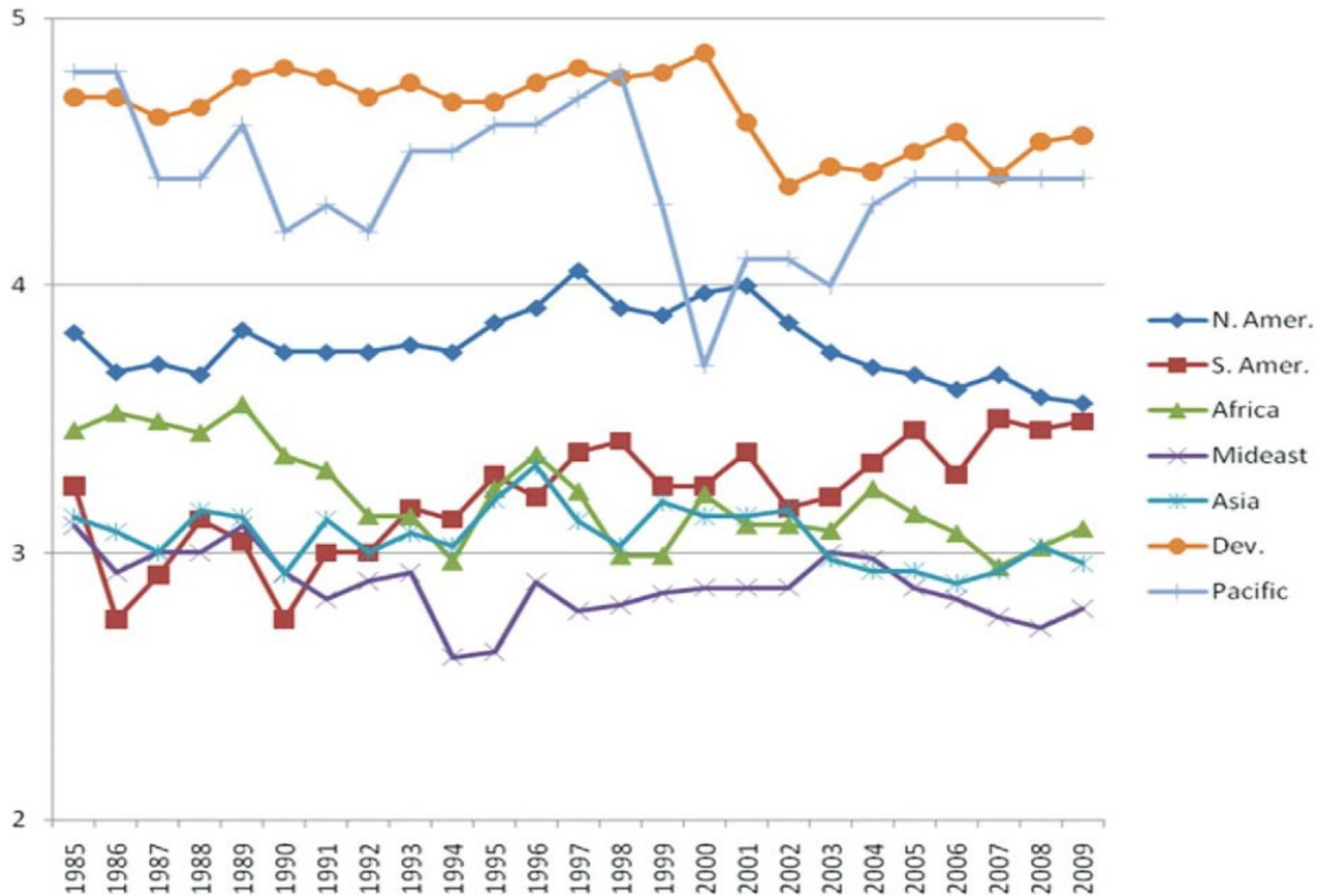
FIG. 1.—Human rights treaty ratification versus human rights practice over time. *% treaties ratified* measures the percentage of available international human rights treaties the average state has ratified in a given year. The data on ratification are described in detail in the section on data. *% repressive* measures the percentage of states reported to repress human rights in a given year. We identify a repressor as any state that has scored a value of 1, 2, or 3 on our standards-based measure of repression, fully described in the section on data.

European approach to human rights?

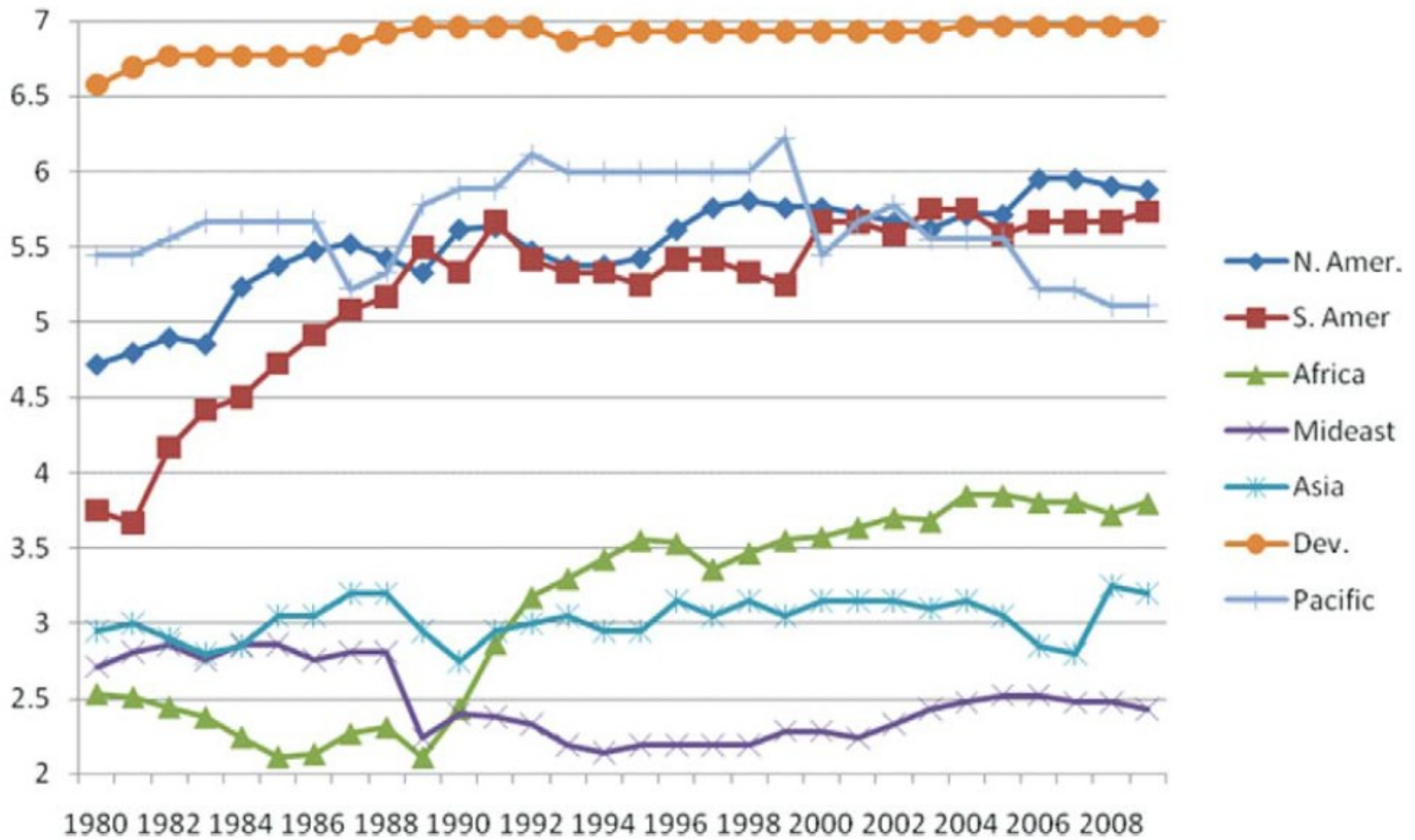


**Figure 1.** Global physical integrity rights (CIRI), 2003–2009.

*Note:* The North American countries in the data set include Mexico, Central America and the Caribbean nations.



**Figure 2.** Global physical integrity rights (Political Terror Scale), 1985–2009.



**Figure 4.** Global political rights (Freedom House), 1980–2009.

# Regional HR protection

(in addition to the global UN system)

- Europe
- Americas
- Africa
- Islamic states
  
- European states the most willing to be internationally bound



# Differences among regions

- In the text of a convention
- In activity of the control mechanism
  
- Western approach?
- European approach?

# Western Approach?

- Differences with the US
  - Death penalty
  - Freedom of expression
  - Social rights
  - Affirmative action
  - US (non)activity in international obligations

# European Approach?

- Differences among states? (*right to life*)
- Differences within the states
- Highest level of norm diffusion – treaties, constitutions; supranational courts + constitutional courts (frequent references); conferences, academia, activists, ...

# European System of HR Protection

- EU
- COE
- OSCE

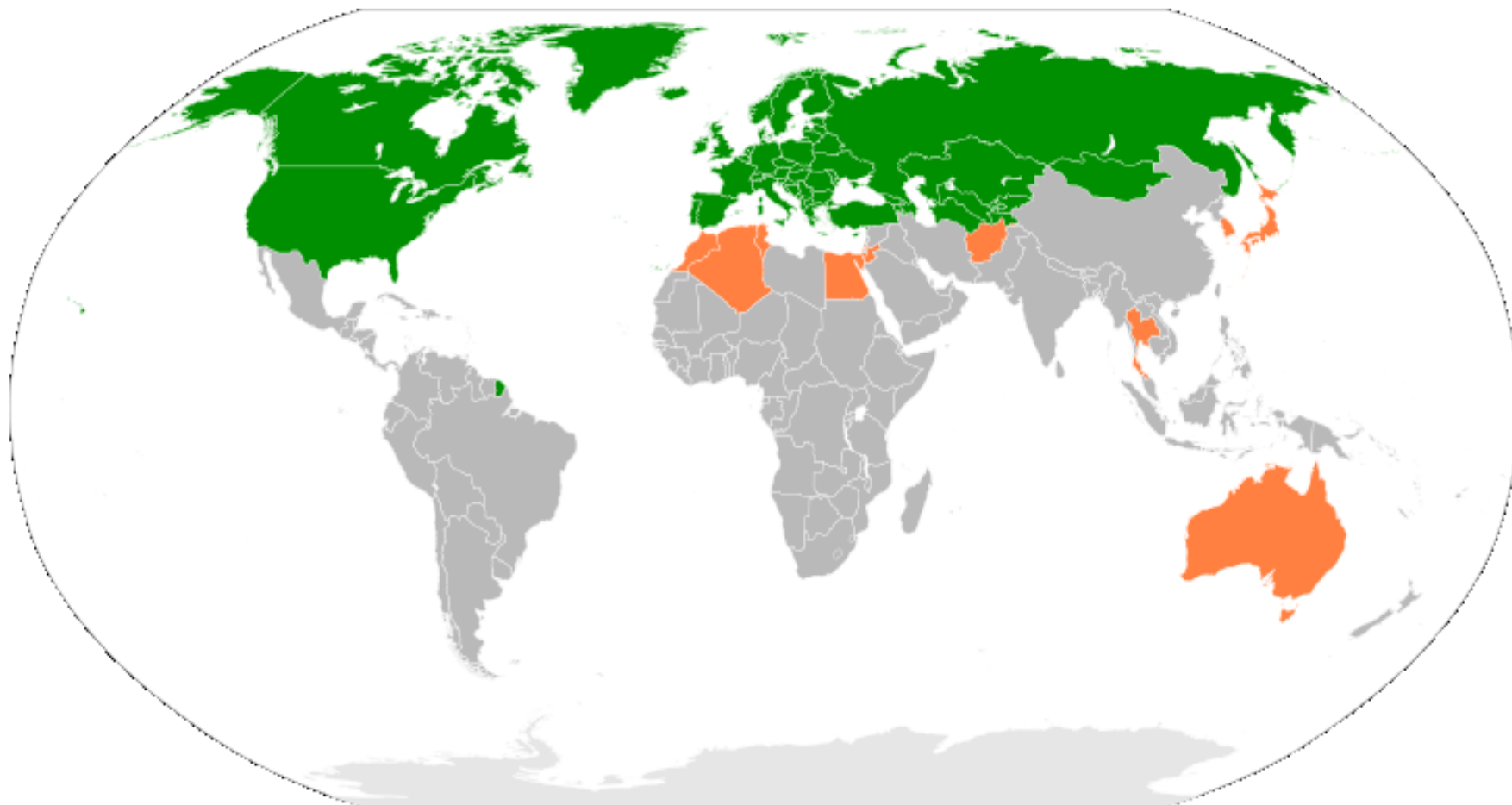
# EU



# COE



# OSCE









Bundesarchiv, Bild 146-1990-009-13  
Foto: o. Ang. | 1975

# Decalogue

## **1. (a) Declaration on Principles Guiding Relations between Participating States**

I. Sovereign equality, respect for the rights inherent in sovereignty

II. Refraining from the threat or use of force

III. Inviolability of frontiers

IV. Territorial integrity of States

V. Peaceful settlement of disputes

**VI. Non-intervention in internal affairs**

**VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief**

VIII. Equal rights and self-determination of peoples

IX. Co-operation among States

X. Fulfilment in good faith of obligations under international law

## VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief

- The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.
- They will **promote and encourage** the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the **inherent dignity of the human person and are essential for his free and full development**.
- Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, **religion** or belief acting in accordance with the dictates of his own conscience.
- The participating States on whose territory national minorities exist will respect the right of persons belonging to such **minorities** to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.
- The participating States recognize the **universal significance of human rights** and fundamental freedoms, respect for which is an **essential factor for the peace, justice and well-being** necessary to ensure the **development of friendly relations and co-operation** among themselves as among all States.
- They will constantly **respect** these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.
- They confirm the right of the individual to know and act upon his rights and duties in this field.
- In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the **Charter** of the United Nations and with the **Universal Declaration** of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the **International Covenants on Human Rights**, by which they may be bound.

# Council of Europe



COUNCIL  
OF EUROPE

CONSEIL  
DE L'EUROPE

---

- Terminology
- UK (IG x SN)
- 1949
- Scope of action
- Soft instruments

# COE



- „Pan European“
- 47 MS
- HR and democracy as an entry condition

# ECHR



The most effective international system for HR protection.

**Protocol 11 (1/11/1998)**







COE Hub Home page

News



2013 Vaclav Havel Human Rights Prize awarded to Belarusian human rights activist Ales Bialiatski 30 September 2013

OECD's Gurría: "It is all about regaining the trust of people"

2013 Vaclav Havel Human Rights Prize awarded to Belarusian human rights activist Ales Bialiatski

Minister Nalbandian reports on the activities of the Committee of Ministers to the Parliamentary Assembly

All news

Focus

World Forum for Democracy



World Forum for Democracy STRASBOURG - 2013

The 2013 Forum will highlight new measures to boost citizen participation in democratic life. It is organised in partnership with the City of Strasbourg, the French government and the Region of Alsace and will be held at the Council of Europe from 27 to 29 November. (more...)

Media partners



Multimedia

Autumn Session: 30 September - 4 October



Addresses by Armenian President Serzh Sargsyan, Serbian President Tomislav Nikolić and the Speaker of the Russian State Duma Sergey Naryshkin will be among highlights of PACE's autumn plenary session. Also on the agenda are debates on national security and access to information, on the functioning of democratic institutions in Bosnia and Herzegovina, and on children's right to physical integrity. There has been a request for an urgent debate on the situation in Syria. (more...)

- Webcast and photo galleries
All Assembly news



Thorbjørn Jagland Secretary General

Chairmanship Armenia May - November 2013

Committee of Ministers Parliamentary Assembly

Congress of Local and Regional Authorities

European Court of Human Rights

Commissioner for Human Rights

Conference of INGOs

2013 COUNCIL OF EUROPE Armenia Chairmanship Nurturing human rights PARTICIPATE

Council of Europe treaties

Treaty Office

Diaries

The week in brief

Contact us

- Visit the Council of Europe
Council of Europe Offices
Online bookshop
Information material
Contacts

Follow us



Newsletters





Quick Links



- [Recent judgments](#)
- [Recent press releases](#)
- [Multimedia](#)
- [Case-Law Information Notes](#)
- [Factsheets](#)
- [Country Profiles](#)
- [Training sessions](#)
- [Other languages](#)

Official visits

Visit by the Minister of the Interior and Public Administration of Slovenia

26/09/2013



On 26 September 2013, Gregor Virant, Minister of the Interior and Public Administration of Slovenia, visited the Court and was received by ...

Visit by a delegation of the Supreme Administrative Court of Sweden

26/09/2013



On 26 September 2013, President Spielmann received a delegation of the Supreme Administrative Court of Sweden led by his ...

Visit by the Minister of Justice of Bosnia and Herzegovina

25/09/2013



On 24 September 2013, Bariša Čolak, Minister of Justice of Bosnia and Herzegovina, visited the Court and was received by Josep ...

Judgment concerning Germany

19/09/2013



In the case of **von Hannover v. Germany (no. 3)** the Court found that there had been no violation of the Convention. In this case Princess Caroline von Hannover complained about the refusal of the German courts to prohibit any new publication of a photo which she considered to be an invasion of her privacy.

[Press release](#)

[Right to the protection of one's image](#)

Forthcoming hearings

27/09/2013



In October 2013, the Court will be holding hearings in the cases of **Anca Mocanu and Others v. Romania, Natsvlishvili & Togonidze v. Georgia and Hämäläinen v. Finland.**

[Press release](#)

[Calendar of hearings](#)

Chamber judgments

Judgment concerning Croatia

19/09/2013

In the case of **Stojanović v. Croatia** the Court found a violation of the applicant's freedom of expression. The case concerns his conviction for defamation of the Croatian ...

President's news

Conference in the ICJ, The Hague

24/09/2013

On 23 September 2013, President Spielmann took part in a conference organised to celebrate the Centenary of the Peace Palace in The Hague on the theme entitled "The ...

Hearings

Hearing concerning Russia

18/09/2013



The Court held a Grand Chamber in the case of **Svinarenko and Slyadnev v. Russia.** ...

Other information

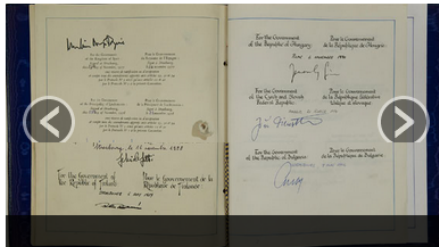
New videos

10/09/2013



The Court is publishing 10 new language versions of the video clip on the criteria for admissibility, designed to inform potential ...

60th anniversary of entry into force of the Convention



Other judgments and decisions

01/10/2013

[13 judgments](#)

26/09/2013

[Judgment Zambotto Perrin v. France](#)  
[Decision Gray v. France](#)  
[Decision Robineau v. France](#)

Forthcoming judgments

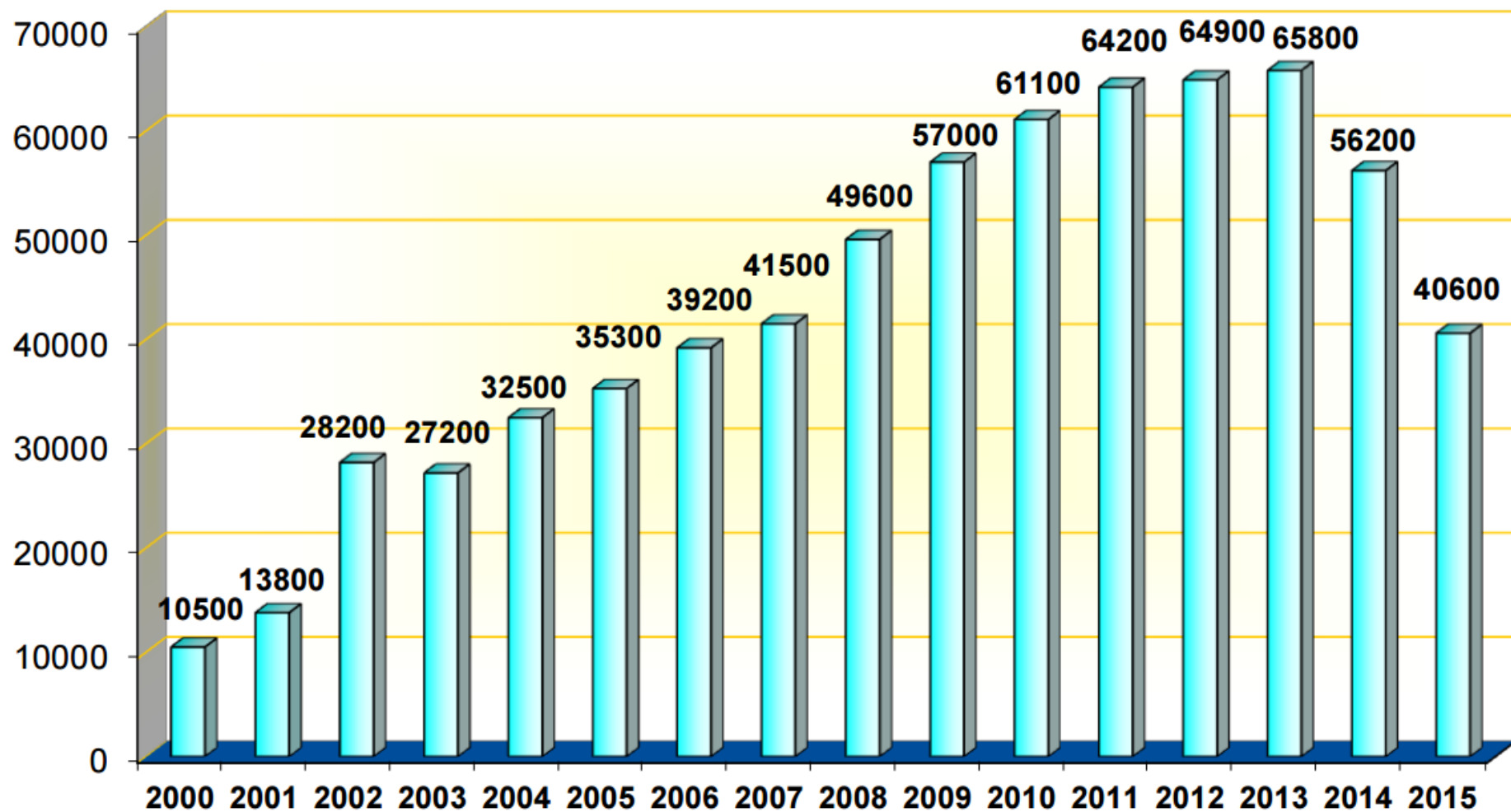
01-03/10/2013

[13 & 15 judgments](#)

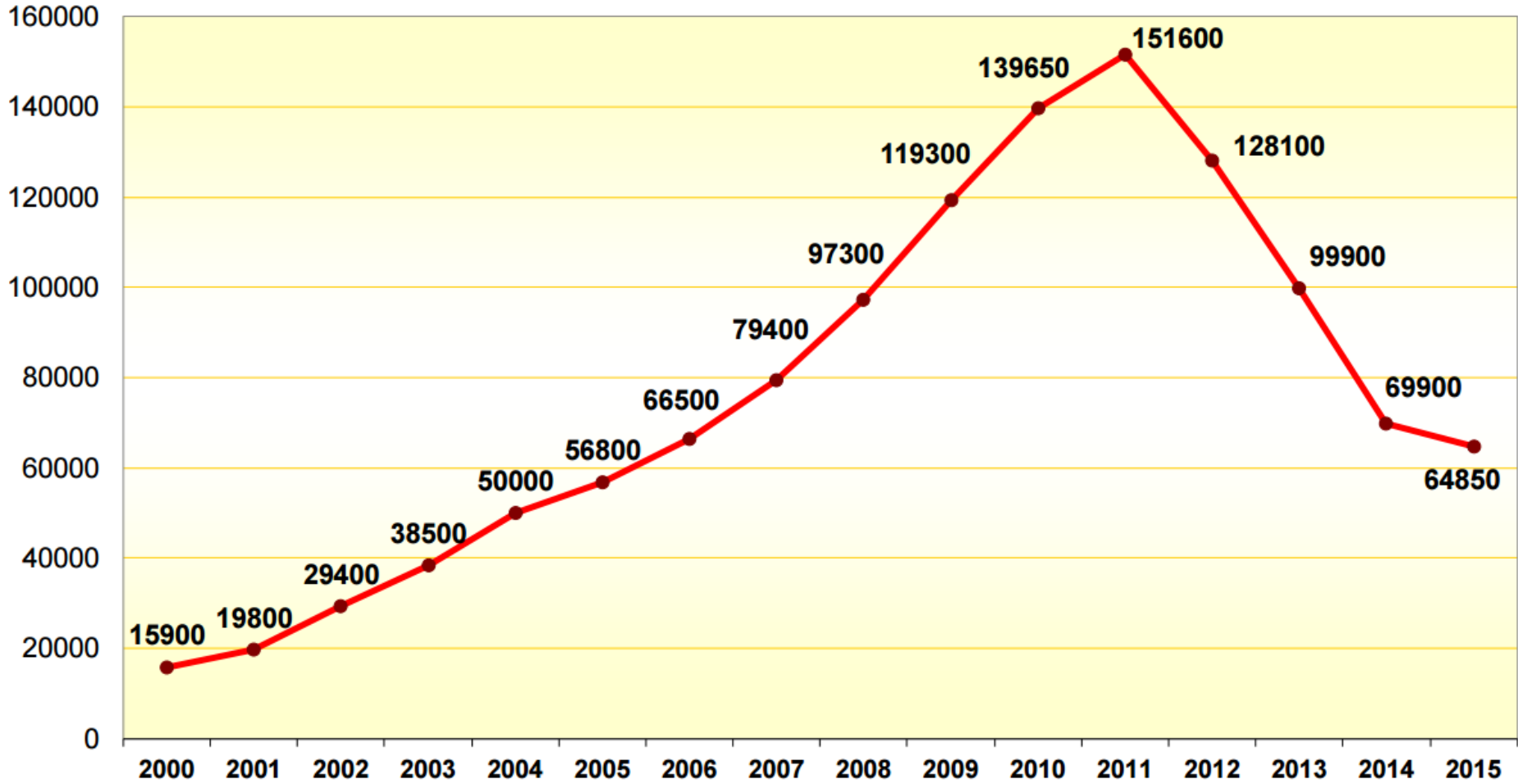
# Bringing a case to the ECtHR

- Who
- When
- Where
- Which rights?

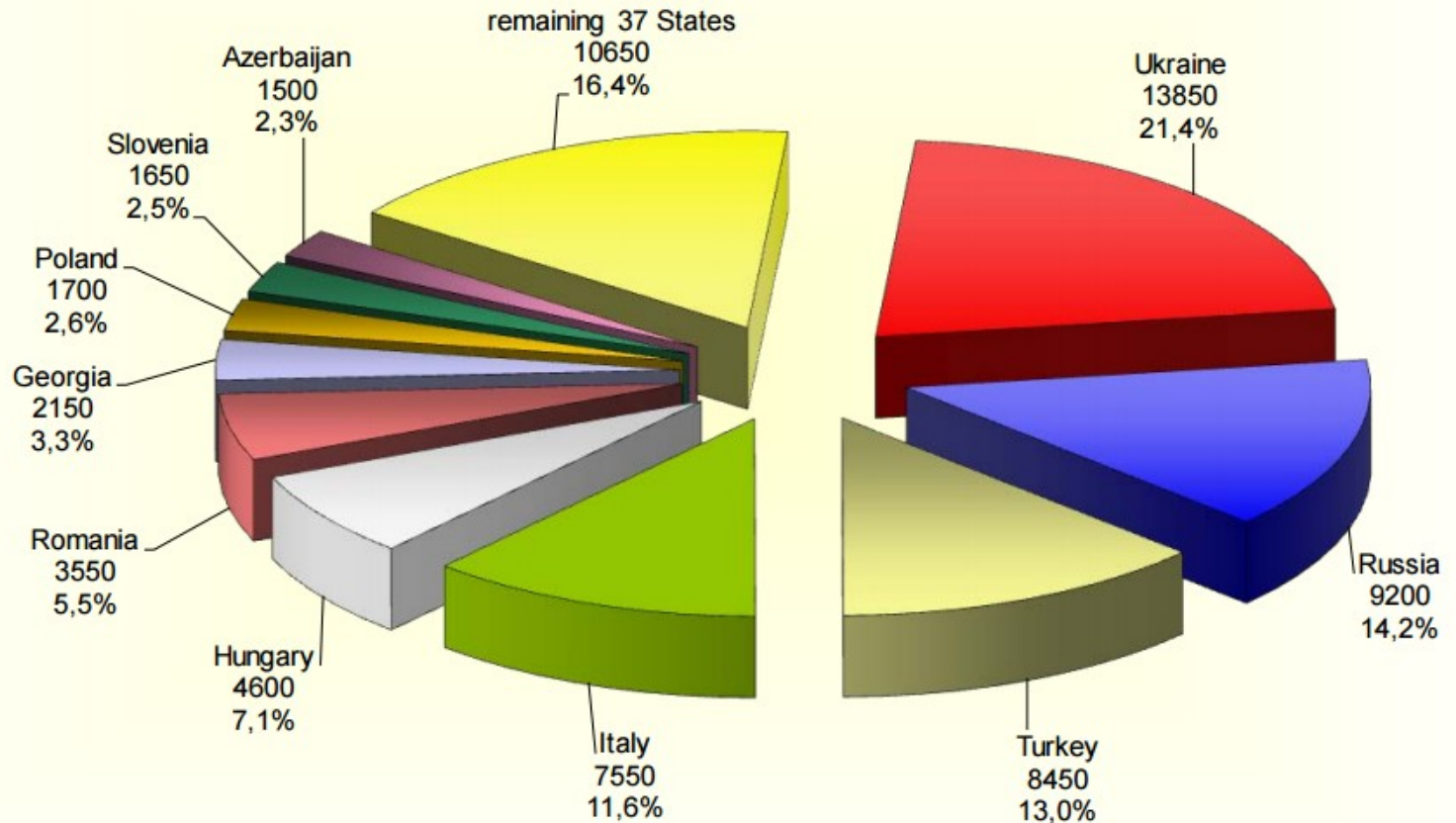
**Chart 1 Applications allocated to a judicial formation per year**



**Chart 2 Applications pending before a judicial formation**

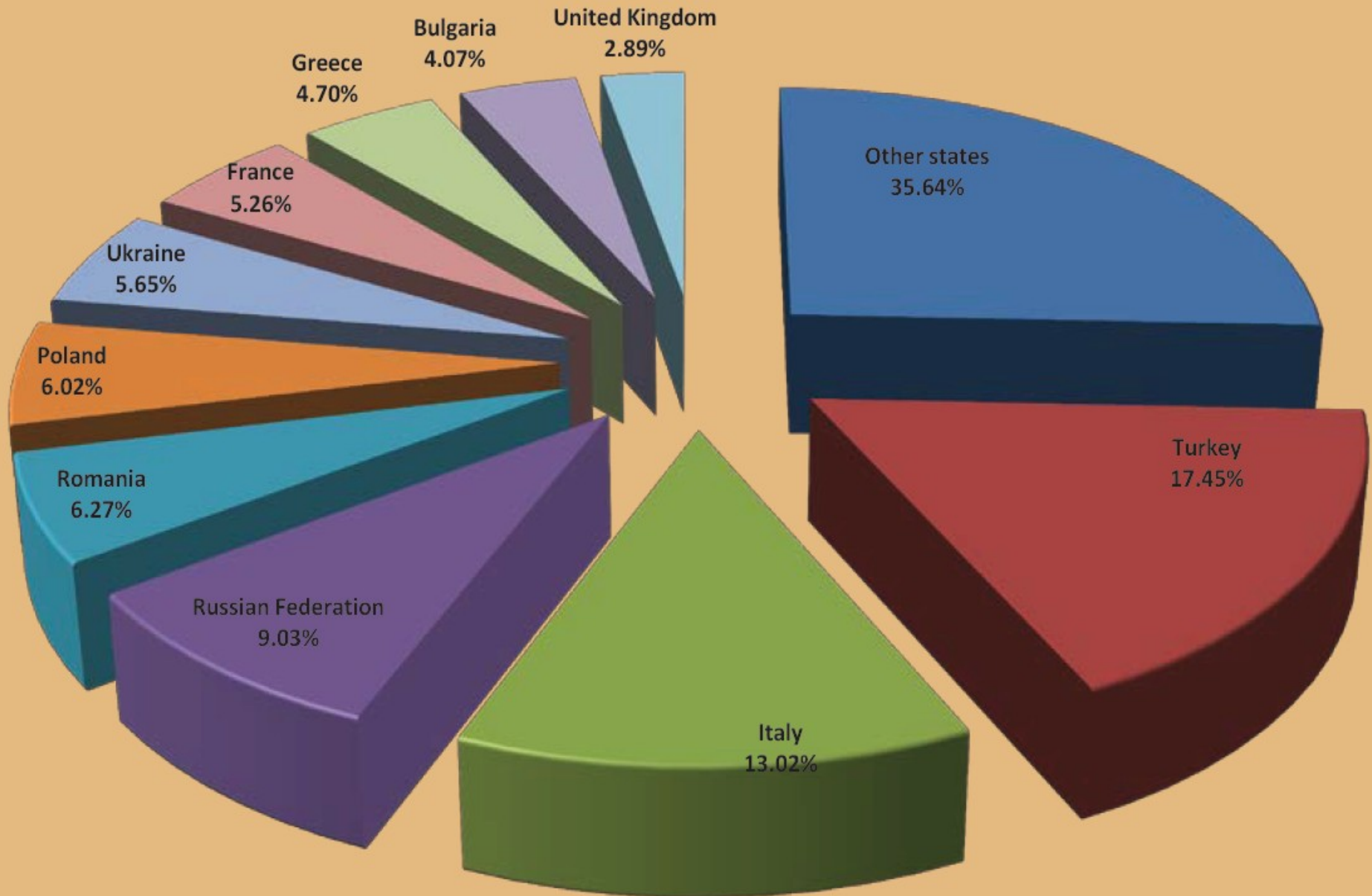


**Chart 3 High case-count States (more than 1,500 applications pending before a judicial formation)**

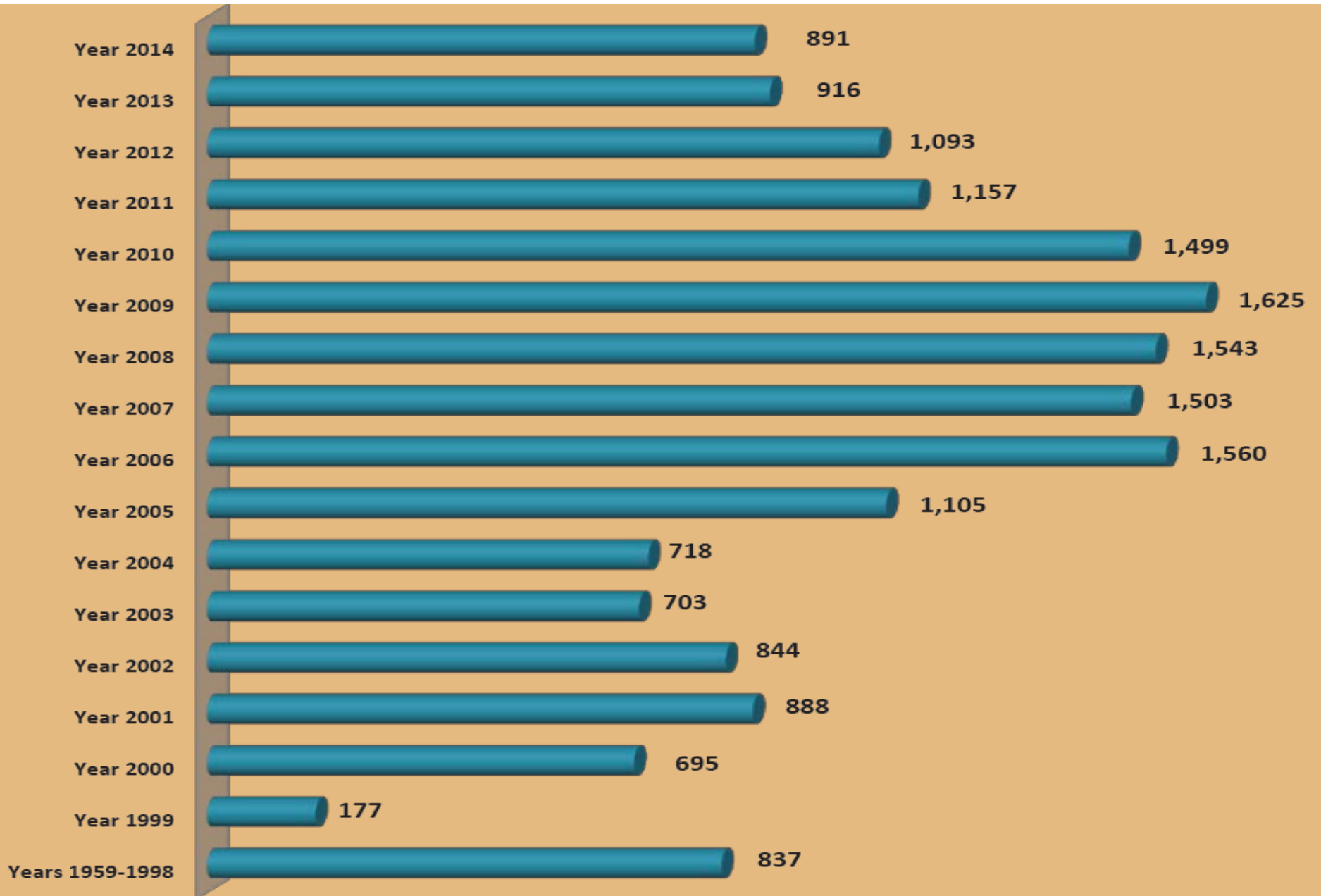


**Total number of pending applications: 64,850**

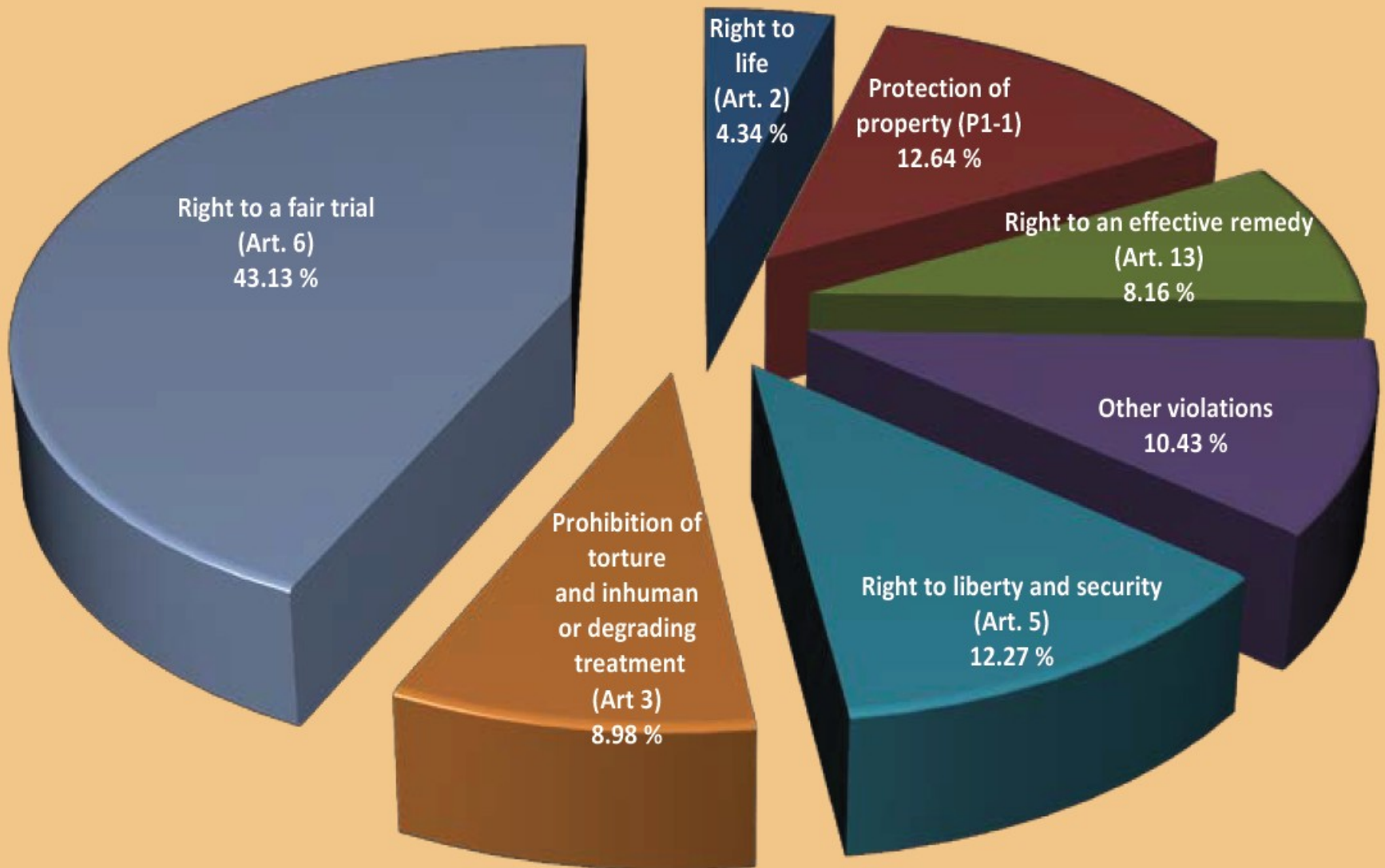
# Violation judgments by State



# Judgments delivered by the Court



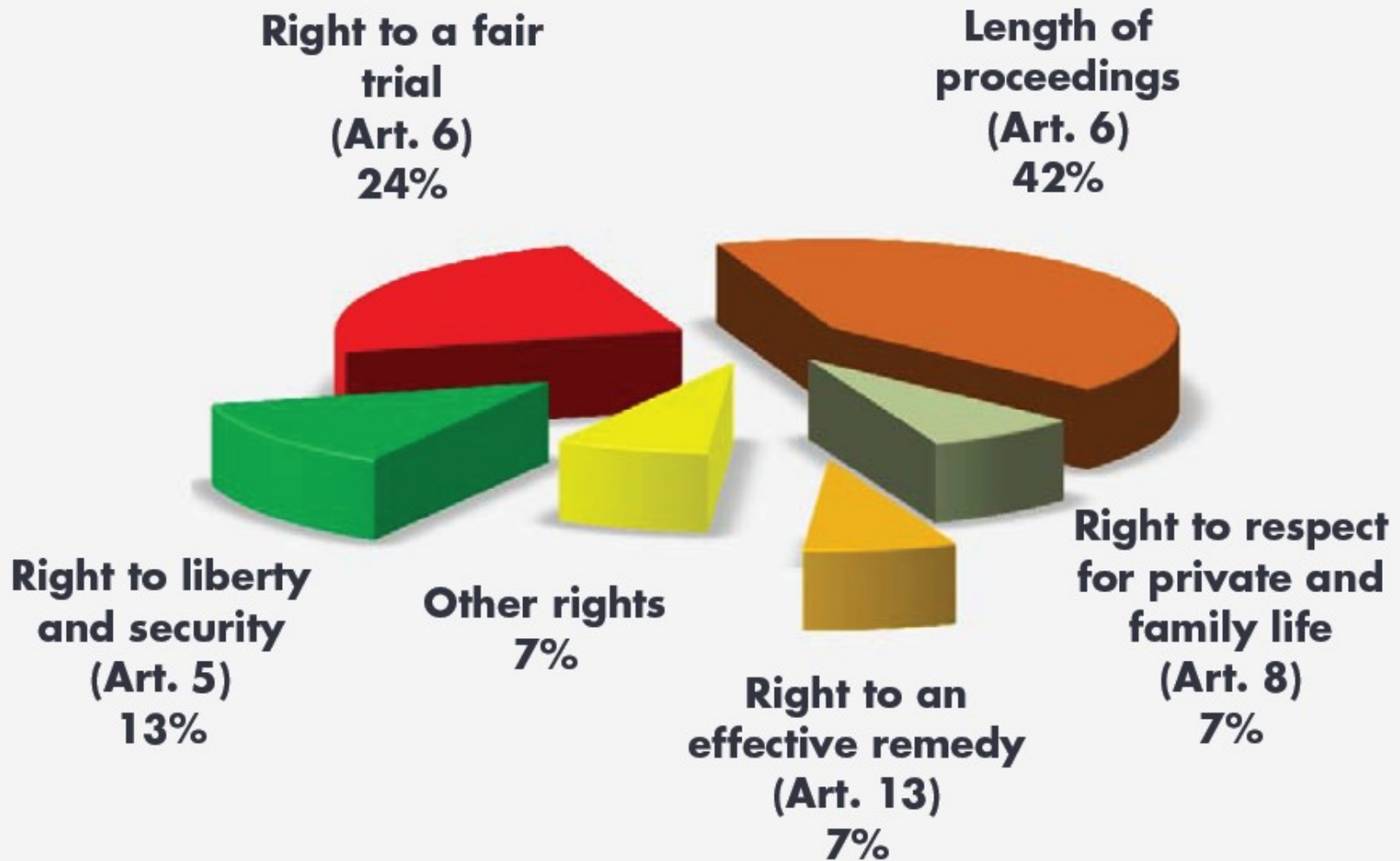






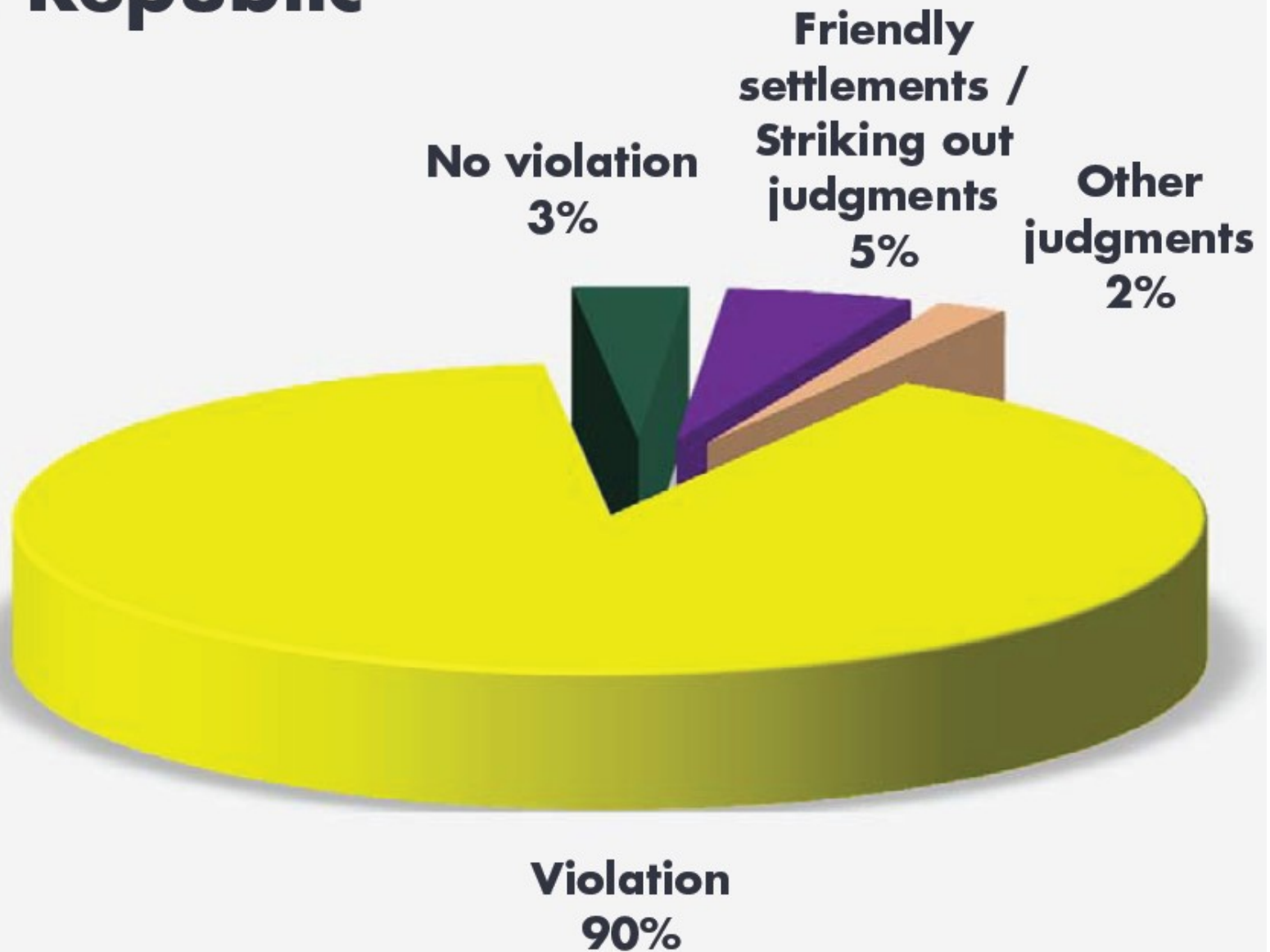
## Subject-matter of the Court's violation judgments

# Czech Republic



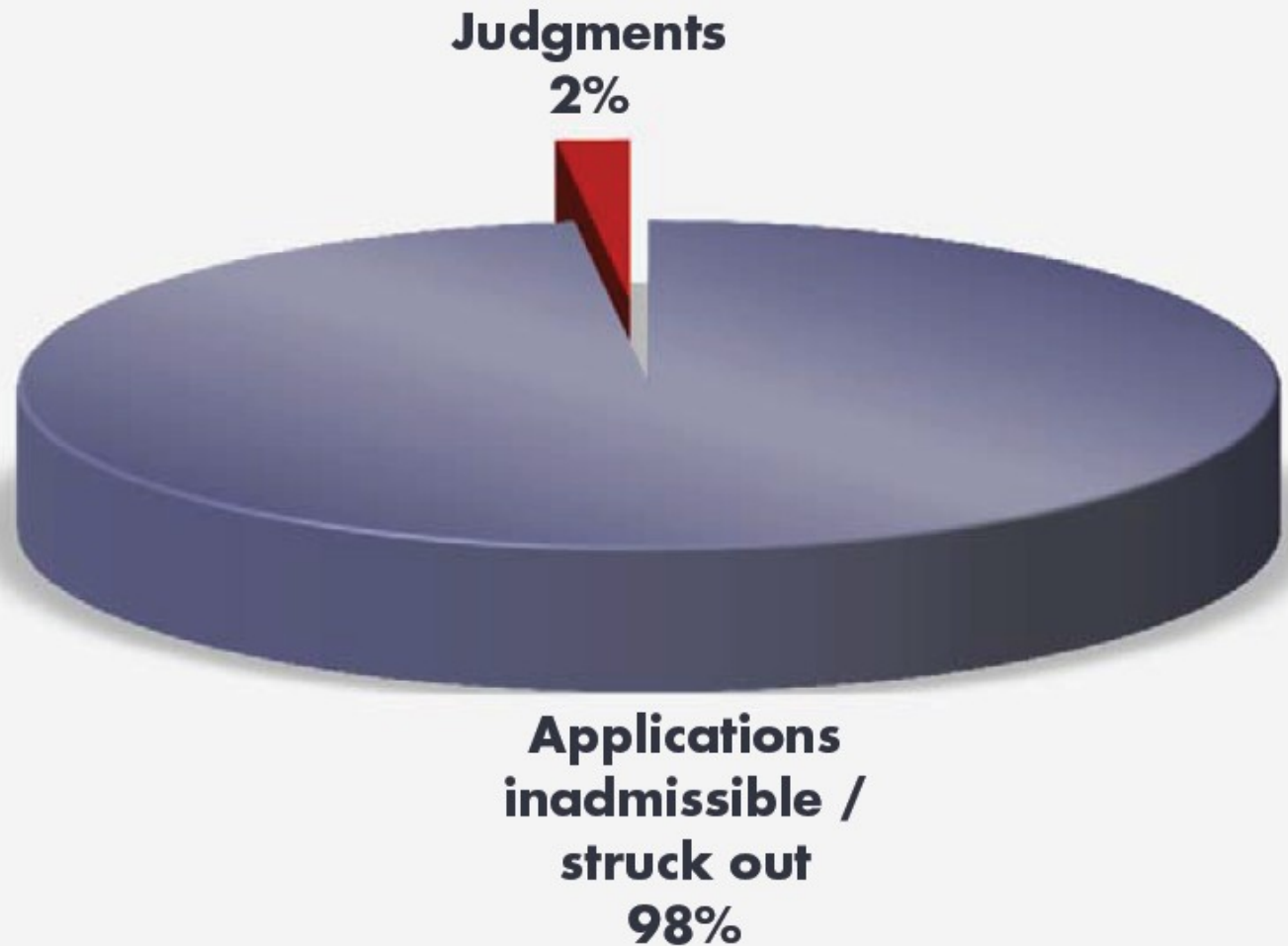
Type of judgment

# Czech Republic

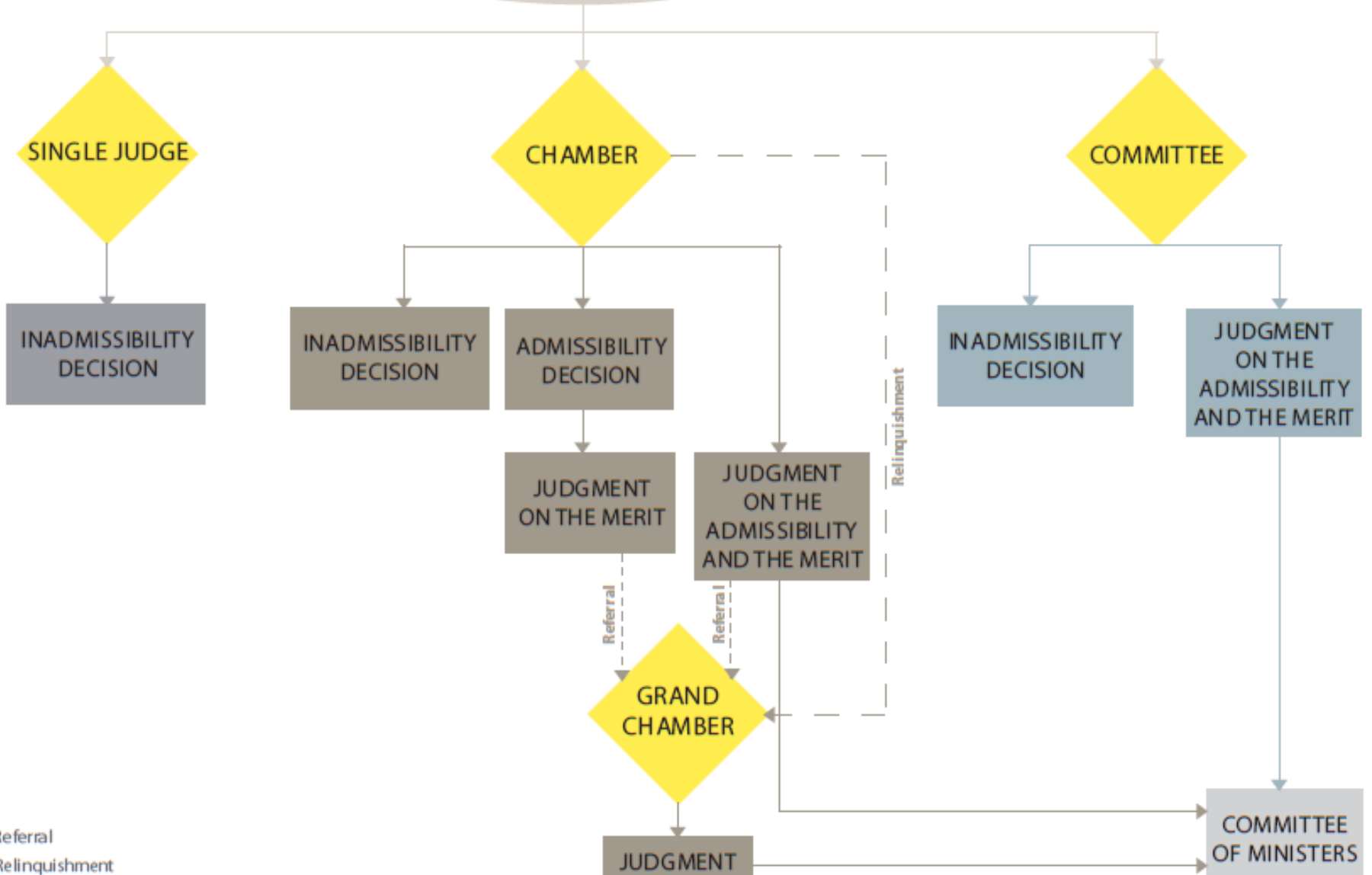


## Judgments and decisions

# Czech Republic

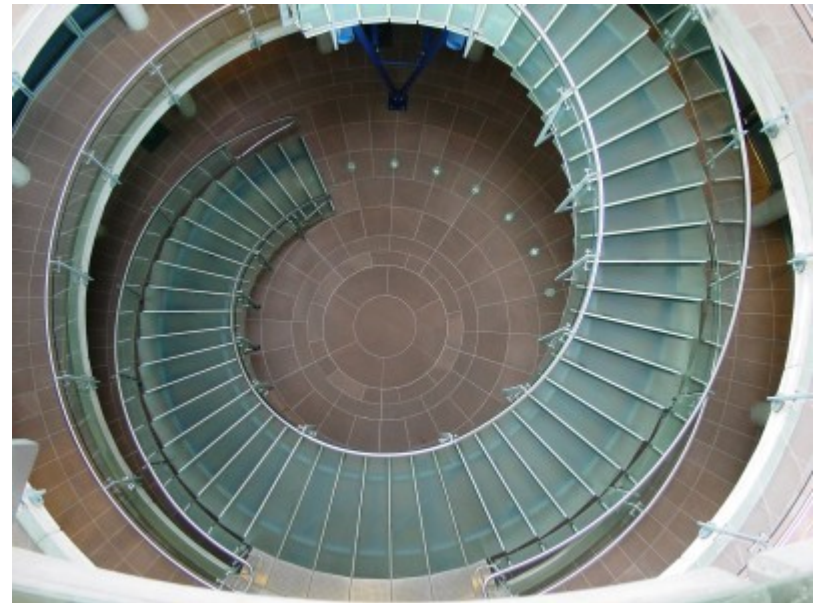


# INDIVIDUAL APPLICATIONS



# Spiral Development

- Guarantee of democracy and fundamental rights
- Fine-tuning of rights
  - creating expectations
- After the Cold War
  - back to the basics
  - vs pressing expectations



# International HR Court and Distortion of Political Process

- Problem of delegation (central banks v HR)
- “Splendid” isolation (lack of publicity)
- Constitutional courts v ECtHR (lack of domestic democratic deliberation)
- ECtHR is a human rights body  
(shared identity, pro-HR bias)



# ECtHR and Non-majoritarian Difficulty

- Principal arguments
- Practical arguments (Dahl)
- Corrections
  - Weak review
  - Judicial self-control
  - States financing the Court
- Few ways to escape compliance (*D.H. v CR*)



Source: [echr.coe.int](http://echr.coe.int)

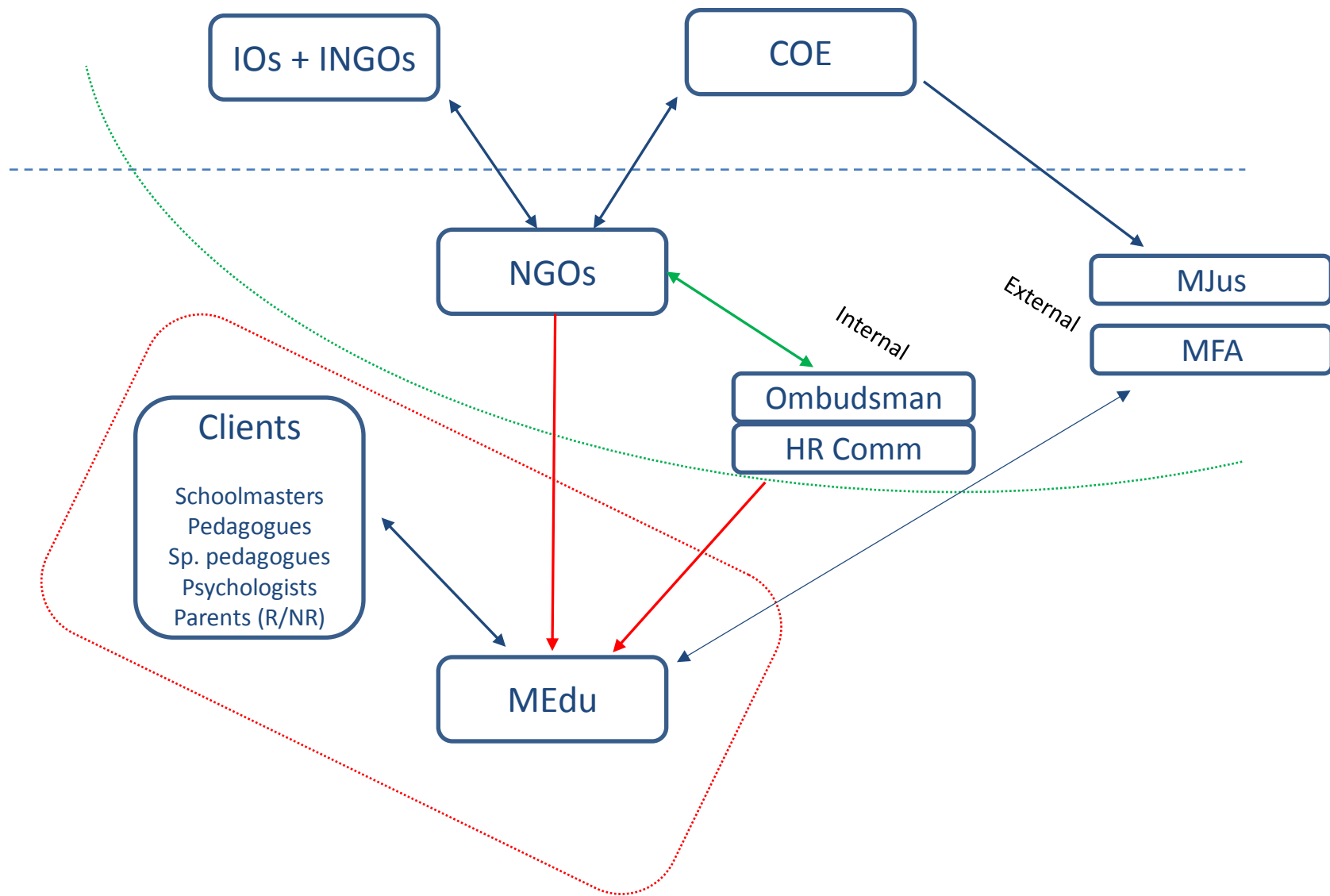


*D.H. and others v Czech Republic*



Ostrava





$$SQ \text{ (MEdU + Clients)} > \text{Change (Internal + External)}$$