

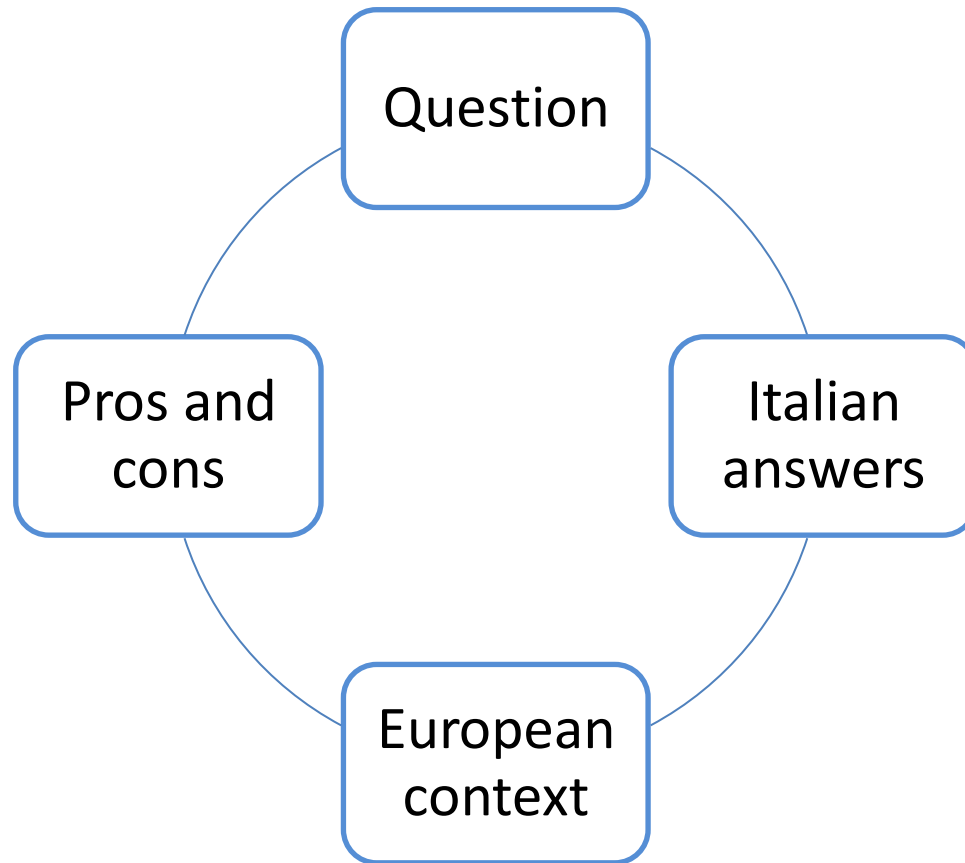
Framework Decision 2009/829/JHA and its applicability to house arrest



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Plan

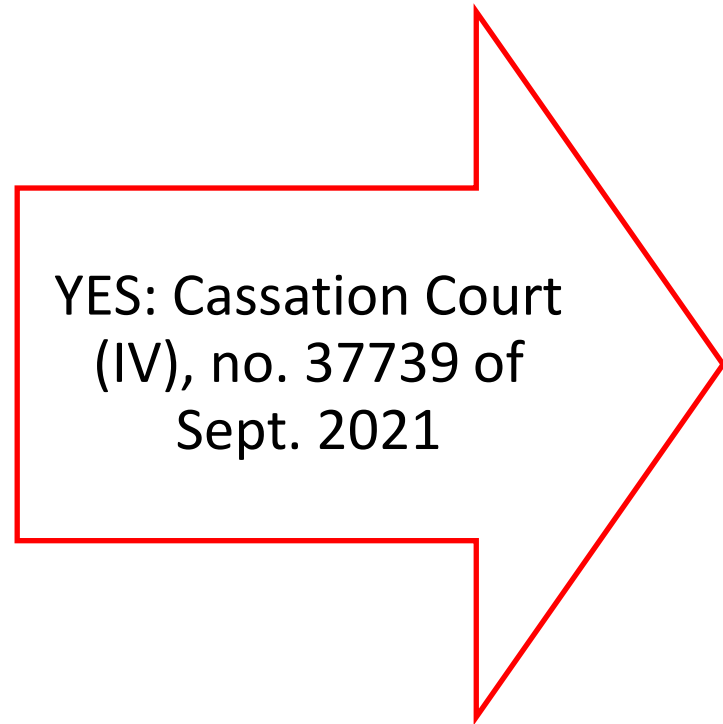
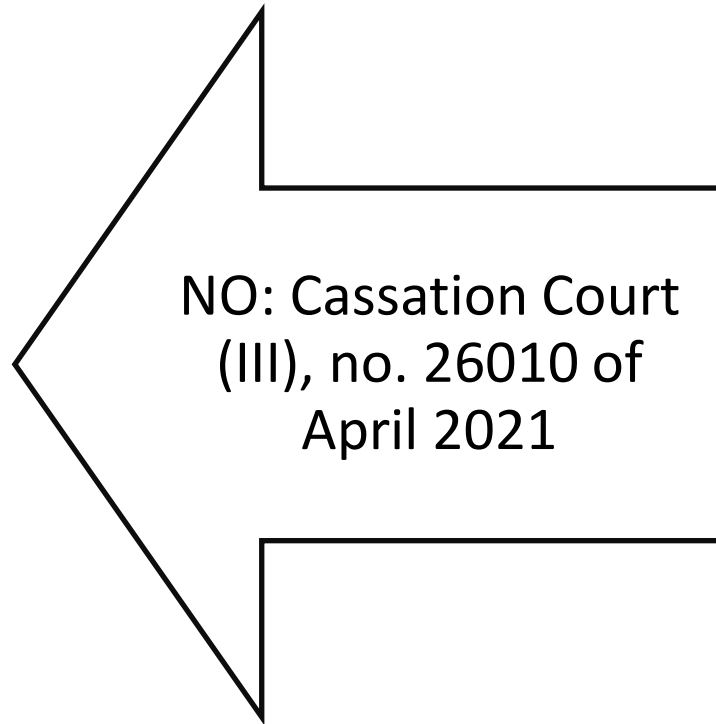


The key question

Can house arrest be framed within the scope of
Art. 8(c) FD 2009/829/JHA, as
"an obligation to remain at a specified place, where
applicable during specified times"?



Reply: the Italian way(s)



III Chamber: NO

Instead: Art. 283
CPP, 'obbligo di
dimora'

Art. 284(5) CPP:
equivalent to
pretrial custody

e.g.: house arrest
can be credited for
future possible
conviction

NB: same position by II Chamber – e.g. 26526 of 2017

IV Chamber: YES

FD tackles risk of discrimination on grounds of residence (recital 5)

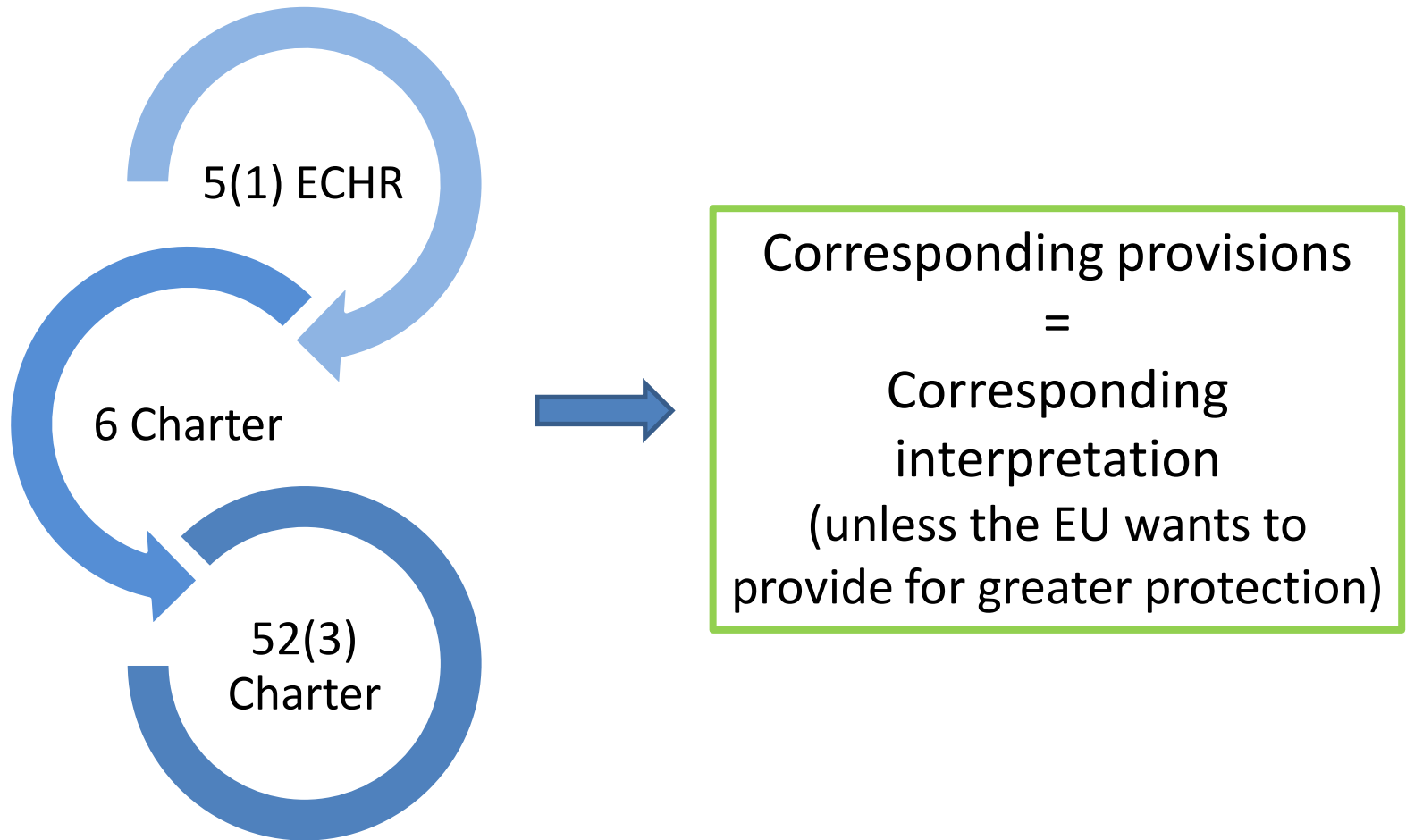
Duty of consistent interpretation (spirit of the FD)

Notion of (provisional) 'detention' applies only to actual imprisonment

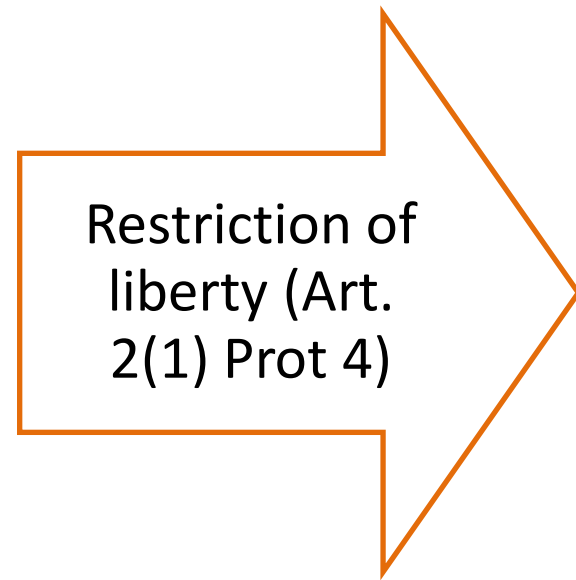
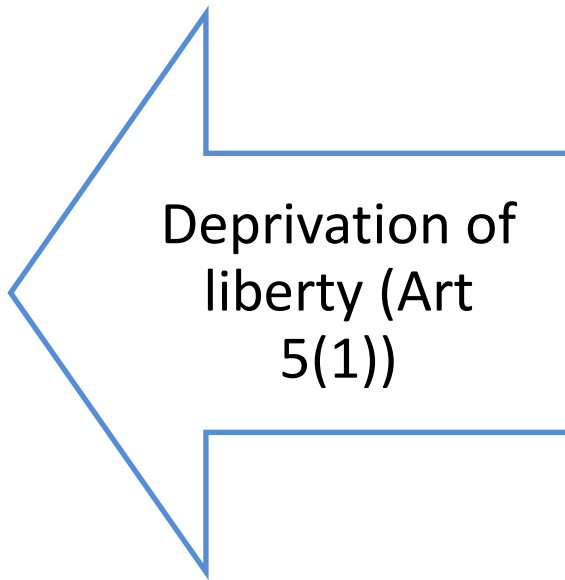
NB: same position by I Chamber no. 8864 of 2/2022

NBB: the court uses the acte claire doctrine: no 267 TFEU

Is it so clear? – EU and ECHR



Is it so clear? – ECHR



Assessment criteria: duration, type, effect, way of implementation.

Overall: degree of intrusion on a person's liberty + intensity/severity of the measure.

Is it so clair? – ECHR

A variety of test-beds: administrative detention of migrants, migrants kept in border transit zones, health measures, etc.

House arrest

Buzadji v. Moldova [GC],
103: «the distinction is
merely one of degree or
intensity, not one of
nature or substance»

104: settled case law
(eg: ITA, LAT, BUL)
confirms that generally
house arrest entails
deprivation of liberty

Is it so clear? – EU

Case C-294/16 PPU, *JZ*, on Art. 26 EAW FD: night 9 hours curfew + electronic monitoring + duty to report to police station on a daily basis



The same criteria used by the ECtHR lead to consider that these measures do not amount to deprivation of liberty and therefore do not entail detention

HOWEVER...

Is it so clear? – EU

1a. 'The terms of a provision which makes no explicit reference to national law for determining its scope and meaning must be given **autonomous interpretation**, to ensure equality and uniform application of EU law.'



1b. When it comes to detention, this autonomous interpretation must take into account 'the terms of the provisions involved, their context, their objectives, the legislation of which it forms part'

Is it so clear? – EU

2. Deprivation of liberty is a constituent of detention and characterises imprisonment, but in exceptional cases also measures other than imprisonment in the strict sense can be so restrictive as to be treated in the same way as imprisonment



e.g.: administrative detention of migrants, migrants kept in border transit zones (Commission v. Hungary), other?

Is it so clear? – EU

Bearing in mind Art. 52(3) Charter and the duty of corresponding interpretation...

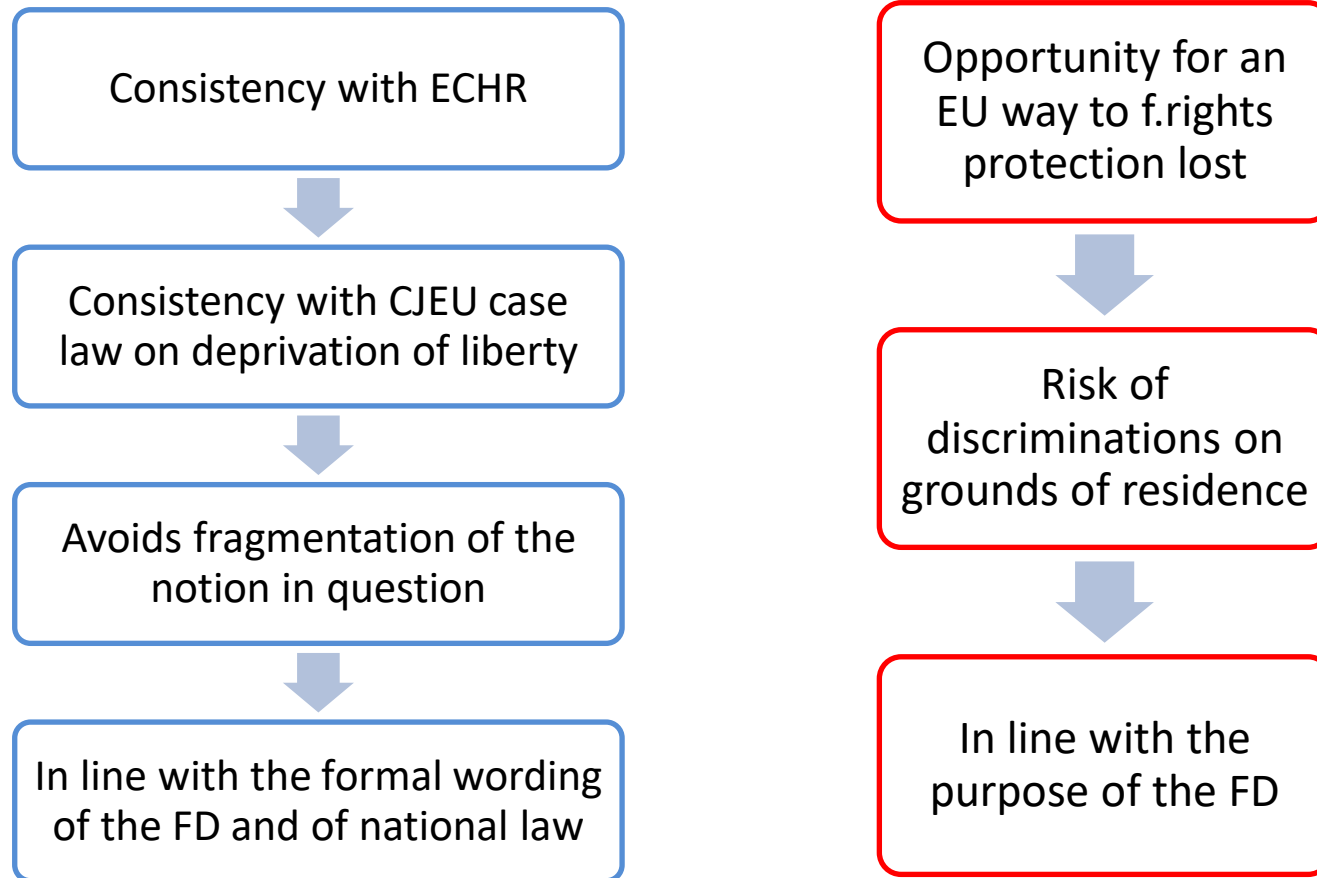
Rule

- House arrest = deprivation of liberty (ECtHR case law)

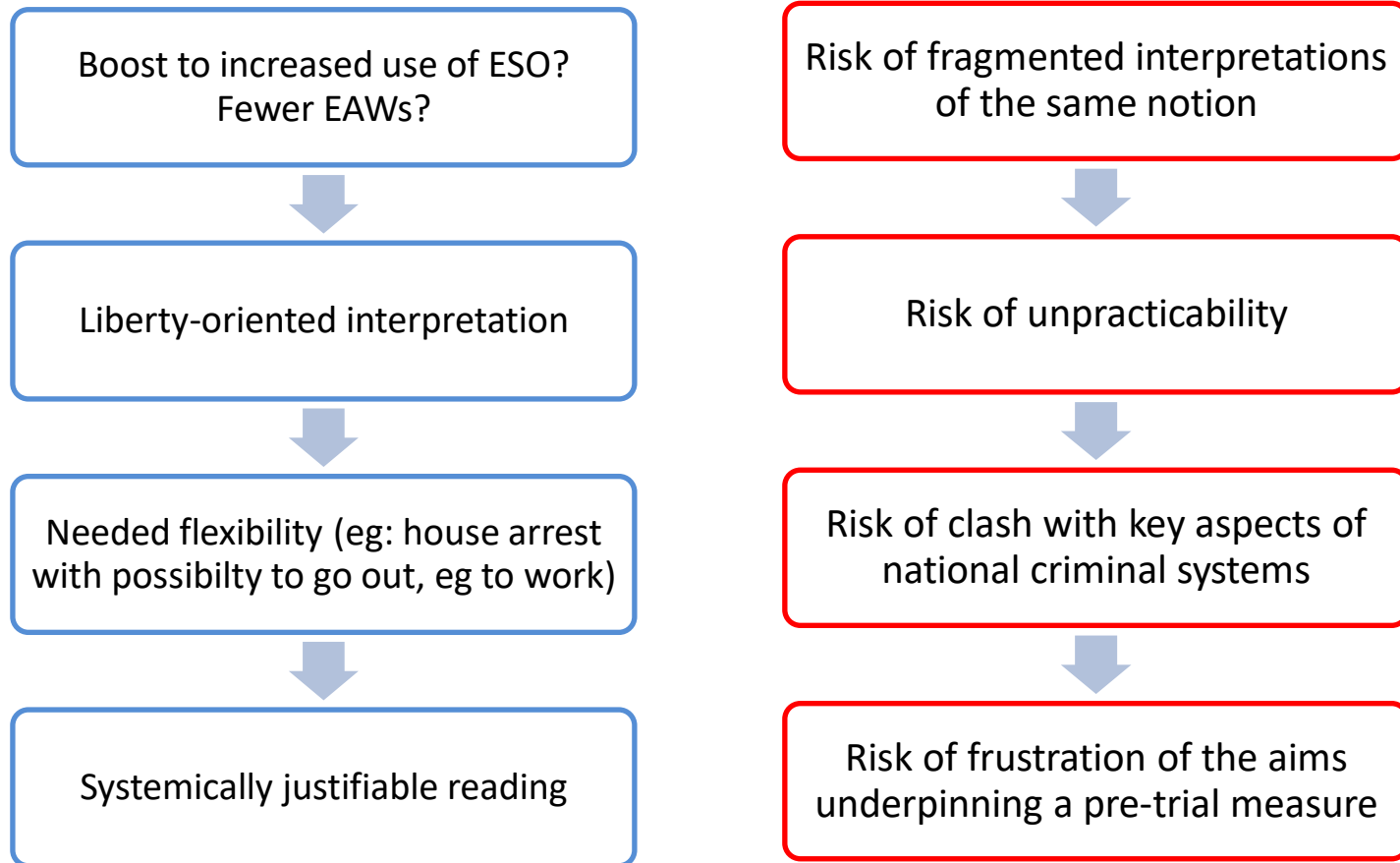
However

- Here perspective reversed: ≠ reading grants greater protection, as it avoids imprisonment

NO: pros and cons



YES: pros and cons



A third 'conditioned' option?

No blanket options, rather a conditioned 'yes':
flexibility between EAW and ESO, depending on the specific characteristics of a case (e.g.: type of house arrest imposed, benefits attached to the house arrest at issue, individual circumstances such as family, work and health, etc.), the crime committed, the need to protect the victim, the aims underpinning the pre-trial measure imposed.