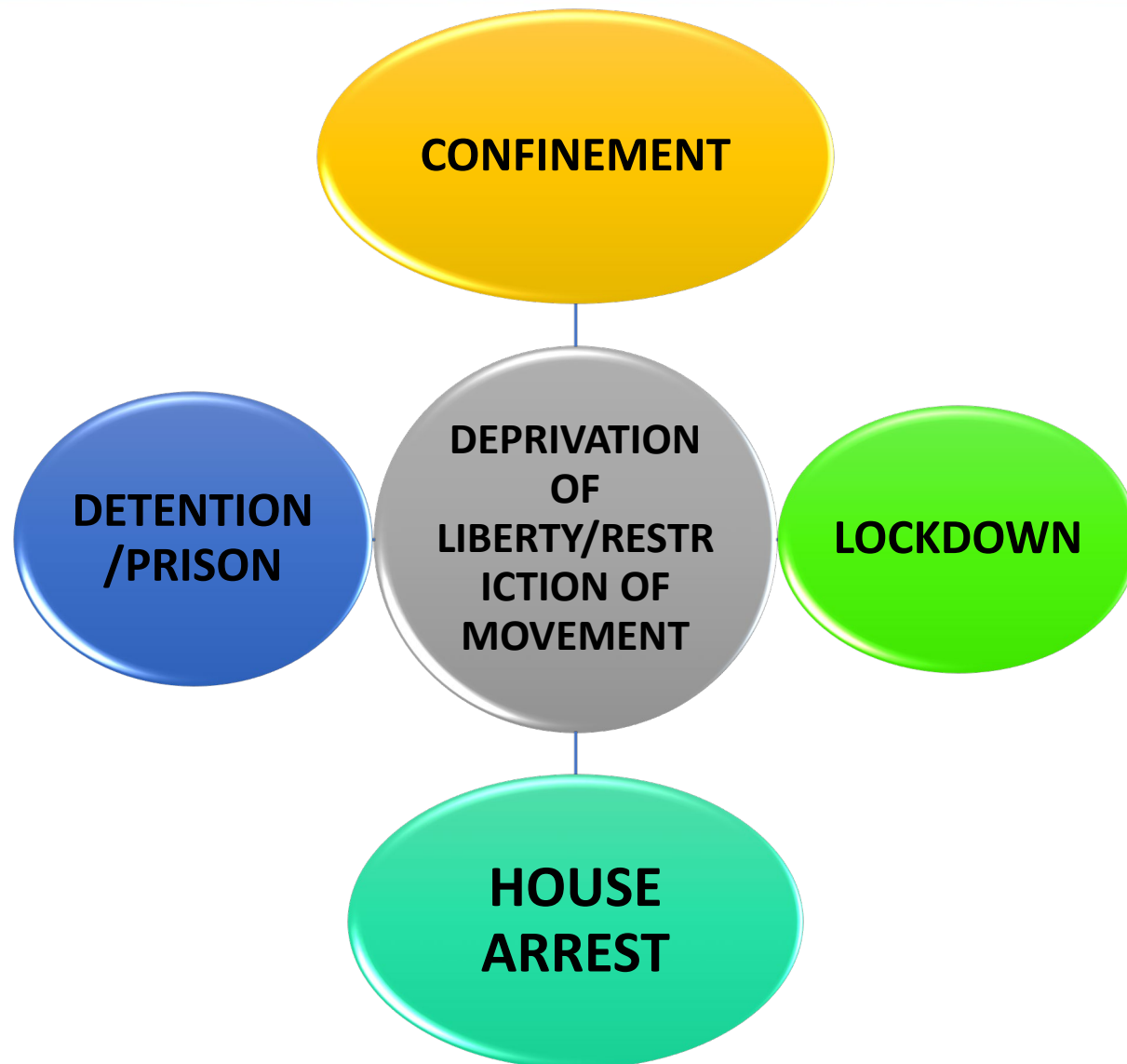




# Deprivation of liberty versus restriction of movement



- “The difference between restrictions on movement serious enough to fall within the ambit of a deprivation of liberty under Article 5 § 1 and mere restrictions of liberty which are subject only to Article 2 of Protocol No. 4 **is one of degree or intensity, and not one of nature or substance**”.
- *Guzzardi v. Italy; De Tommaso v. Italy* [GC], *Austin and Others v UK* [GC]



## DECIDING FACTORS

- Type and place of restriction (e.g island *Guzzardi v. Italy*; police cordon in *Austin v UK*; hotel in *Riera Blume and Other v Spain*; nursing home in *H.M v. Switzerland*);
- Relevant duration (in *Austin and Others v UK* the duration of inability to leave the cordon was decisive to fall under restriction of movement);
- Effects and manner of implementation of the measure in question (possibility to socialize/temporarily leave place of confinement- *De Tommasi v. Italy*);
- Person's consent to the confinement in questions and fear of sanction for non-compliance (*Storck v Germany*)

## DEPRIVATION OF LIBERTY UNDER ARTICLE 5



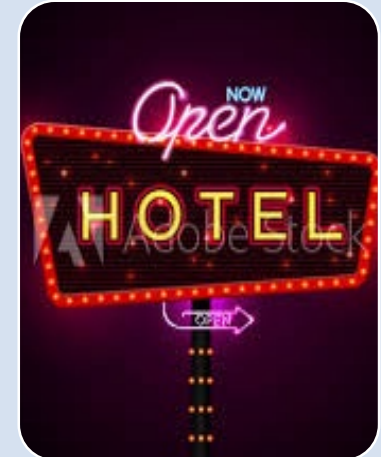
**Guzzardi v. Italy** (placed on island Asinara, Sardinia for period of 3 years)



**Miladinovi and Other v. North Macedonia** (house arrest of one applicant only for period of around eight months)



**Enhorn v. Sweden** (one and a half year involuntary placed in hospital)



**Rierra Blume v. Italy** (involuntary placement in hotel by family assisted by police for period of 10 days)

## RESTRICTION OF MOVEMENT UNDER ARTICLE 2 OF PROTOCOL 4



*de Tommaso v. Italy;* (special police supervision (for two years and impose a compulsory residence order on him)



*Austin and Others v UK* (for 8 h the applicants/non-demonstrants were contained within a police cordon at Oxford Circus )



*Gahramanov v. Azerbaijan* applicant was placed in a room in the transit zone as routine border control for period of 4 hours, refused to take the flight, did not complain of Ar2Pr4 (see mutatis mutandis Kasparov v. Russia)



# Deprivation of liberty or restriction of movement?

Citizen coming from  
aboard: (14+14 days  
self-isolation at  
home or in  
hotels/camps

Limited duration  
outside activities/  
police curfew

Arrest/detention/or  
heavy  
fines/enforced  
confinement for  
non-compliance  
with restrictive  
measures

## ARE RESTRICTIONS LAWFUL, NECESSARY AND PROPORTINATE?



Lawful/In accordance with the Law



Necessary in the democratic society



Proportionate to the legitimate aim pursued



# FRANCE

- More than **950,000 fines** have been issued
- **Fine is €135**; second breach registered within 15 days of the first breach will be punished with a **€200 fine**. Four times break in 30 days risk a **€3,700 fine and up to six months in prison**

## OVERVIEW OF THE LEGAL AND FACTUAL ASPECTS RELATED TO COVID-19 MEASURES IN WESTERN BALKAN AND TURKEY

Criminal offences and penalties under Criminal Code	Other relevant laws	Countries examples/statistic	Challenges before national judicial bodies	Derogation of the ECHR under Article 15
<p><b>Failure to Act Pursuant to Health Regulations During Epidemic;</b>          “Transmitting an infectious disease”,          “Serious offences against human health”  <b>Fines (North Macedonia up to 5000 EUR and imprisonment from one- to three years, sentences varies in</b></p>	<p>Law on prevention and fighting of contagious disease (fines varies in countries);  <b>Decision on restrictions measures based on those laws</b></p>	<p><b>Enhanced restrictions/longer self-isolations/confinement at home/hotels/camps/centres.</b>  <b>Criminal sanctions due to non-compliance with measures (in North Macedonia indictment against citizens with proposed fine of 2000 EUR for being outside during the police curfew (allegedly first violation).</b>  <b>Reported detention cases for non-complying with measures in Serbia and people being placed in specially built (adapted) detention facilities.</b>  <b>Media reported in Montenegro detention of citizens posting "fake news" on social networks, which</b></p>	<p><b>Bosnian Constitutional Court found that the Decision to fully restrict movement for elderly people above 65 and children below 18 years has violated the right to Article 2 Protocol 4 as being not proportionate to the legitimate aim pursued.</b>  <b>Challenges on constitutionality, legality and proportionality of some restrictions measures pending before CC some countries (North</b></p>	<p><b>North Macedonia, Serbia and Albania send notification to the Secretary General for Derogation of the ECHR</b></p>

# QUESTIONS/COMMENTS ON SITUATION IN YOUR RESPECTIVE COUNTRY



THANKS YOU FOR YOUR ATTENTION