

A blurred photograph of an airport terminal. At the top, there are two signs: 'Arrivals' with a yellow airplane icon and 'Departures' with a yellow airplane icon. The rest of the image is out of focus, showing people and lights in a large hall.

Arrivals

Departures

# Mobile EU Citizens and the Use of Minority Languages in Court Proceedings

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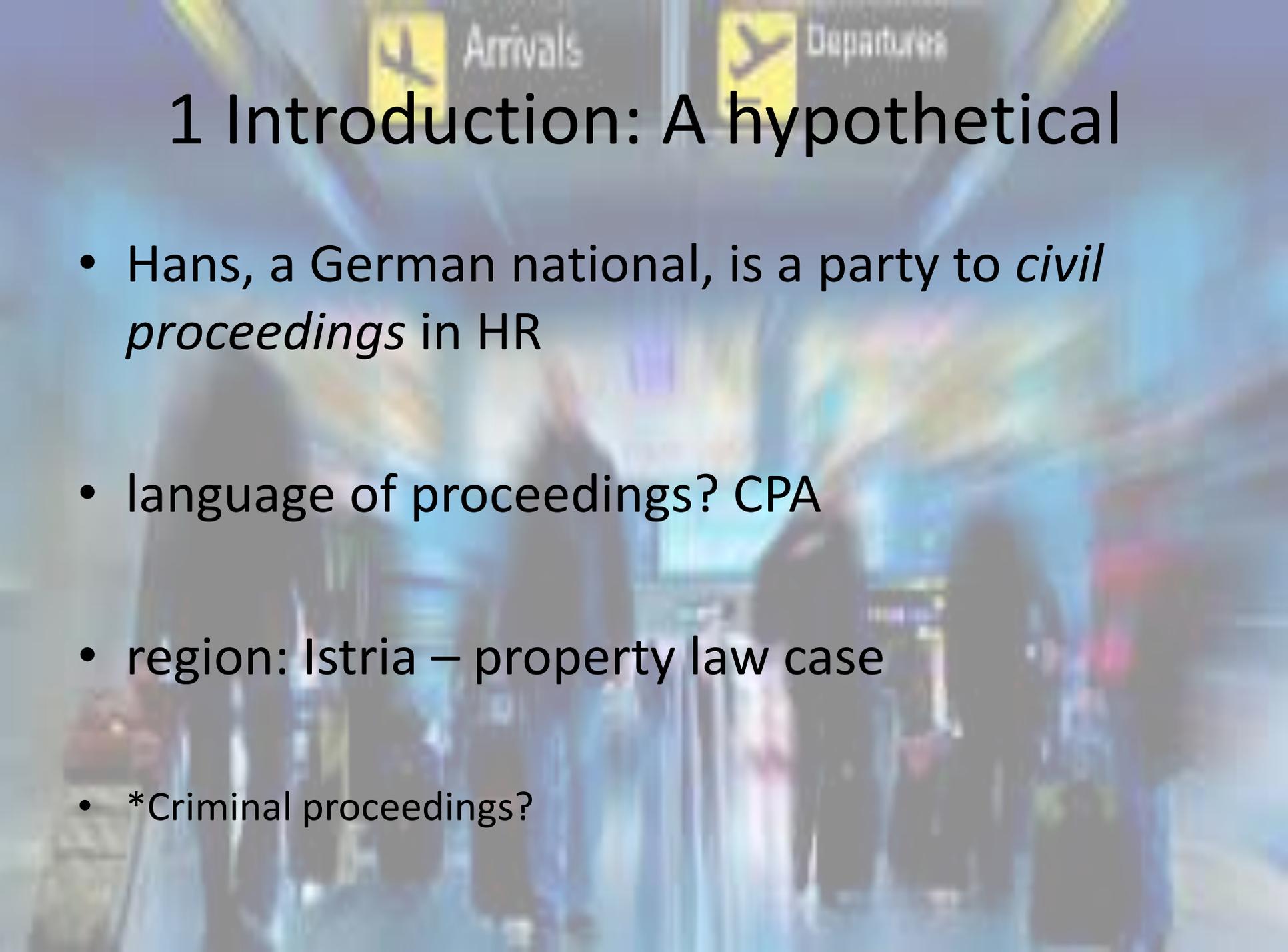
Arrivals



Departures

# Overview

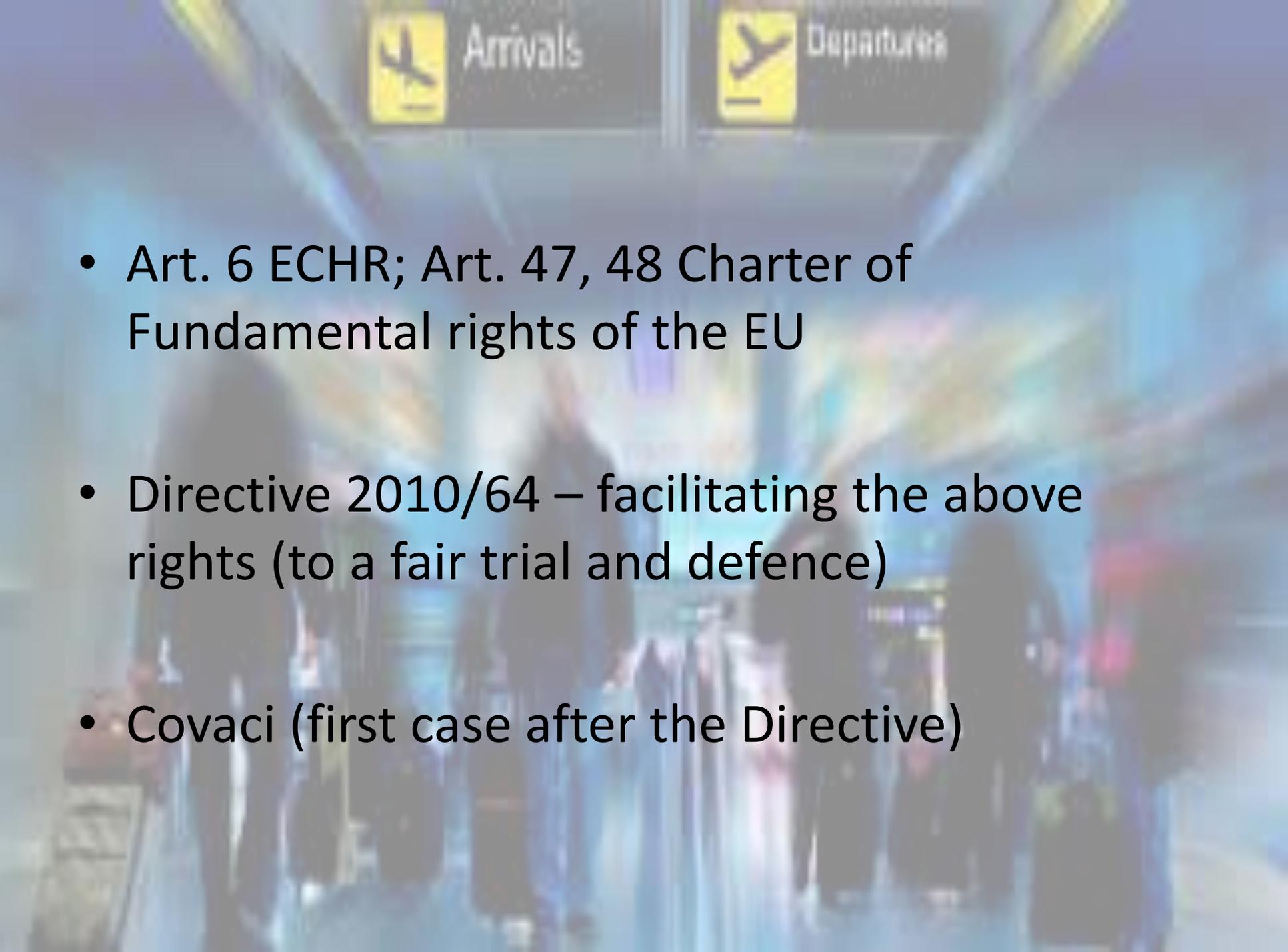
- 1 Introduction
- 2 EU citizenship and the freedom of movement: The right to use a minority language at EU courts
- 3 Repercussions for court interpreters



# 1 Introduction: A hypothetical

- Hans, a German national, is a party to *civil proceedings* in HR
- language of proceedings? CPA
- region: Istria – property law case
- \*Criminal proceedings?

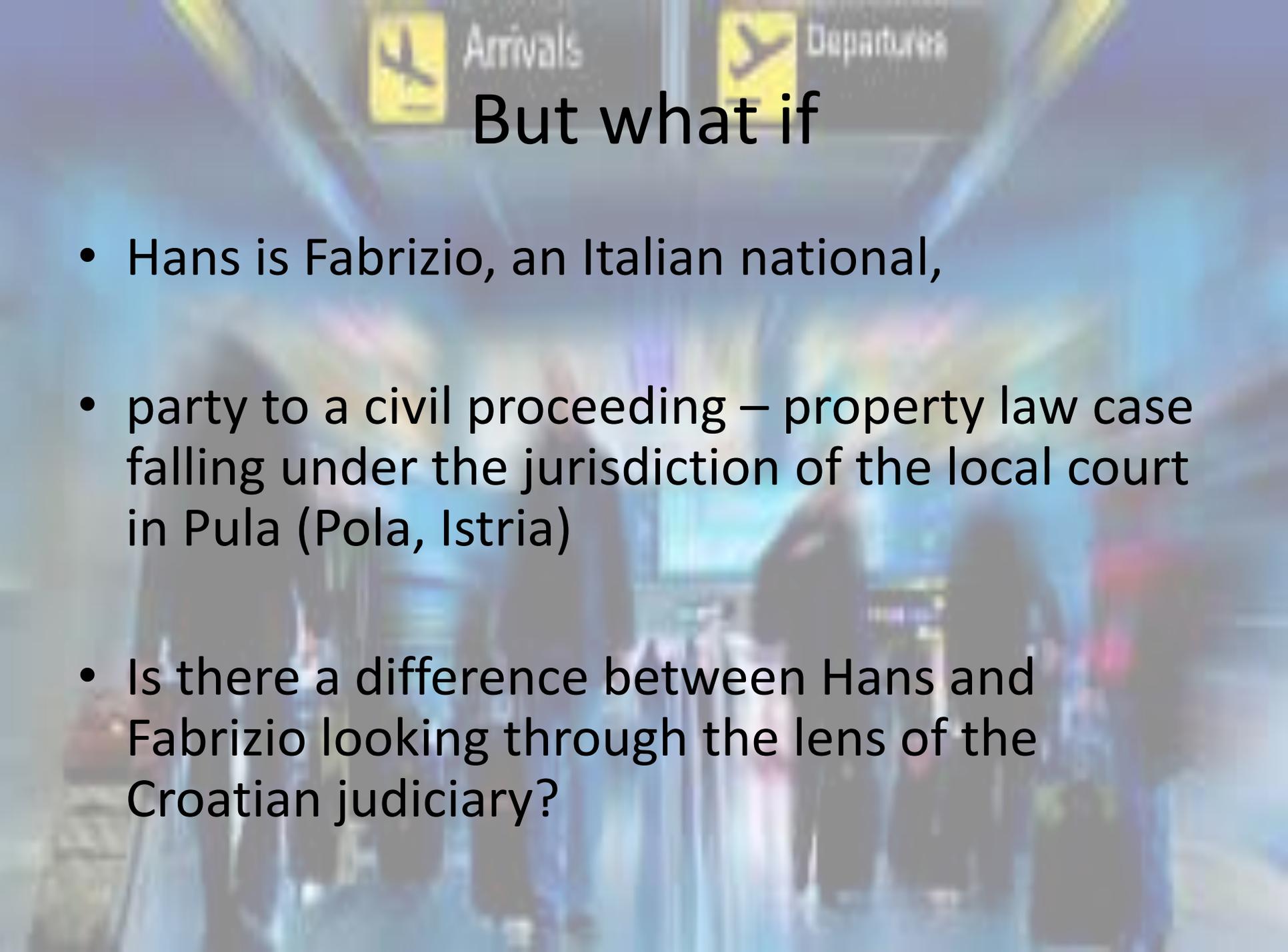




Arrivals

Departures

- Art. 6 ECHR; Art. 47, 48 Charter of Fundamental rights of the EU
- Directive 2010/64 – facilitating the above rights (to a fair trial and defence)
- Covaci (first case after the Directive)



# But what if

- Hans is Fabrizio, an Italian national,
- party to a civil proceeding – property law case falling under the jurisdiction of the local court in Pula (Pola, Istria)
- Is there a difference between Hans and Fabrizio looking through the lens of the Croatian judiciary?

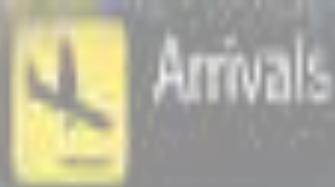


# International instruments for the protection of minority languages

- UN International Covenant on Civil and Political Rights
- UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities
- Council of Europe European Charter for Regional or Minority Languages etc.

## 2 Using minority languages at EU courts

- right to use minority languages derives from **EU citizenship**
- every person holding a nationality of a MS is a Union citizen
- EU citizenship enables “those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality”(CJEU, case 184/99, *Rudy Grzelezyk*)

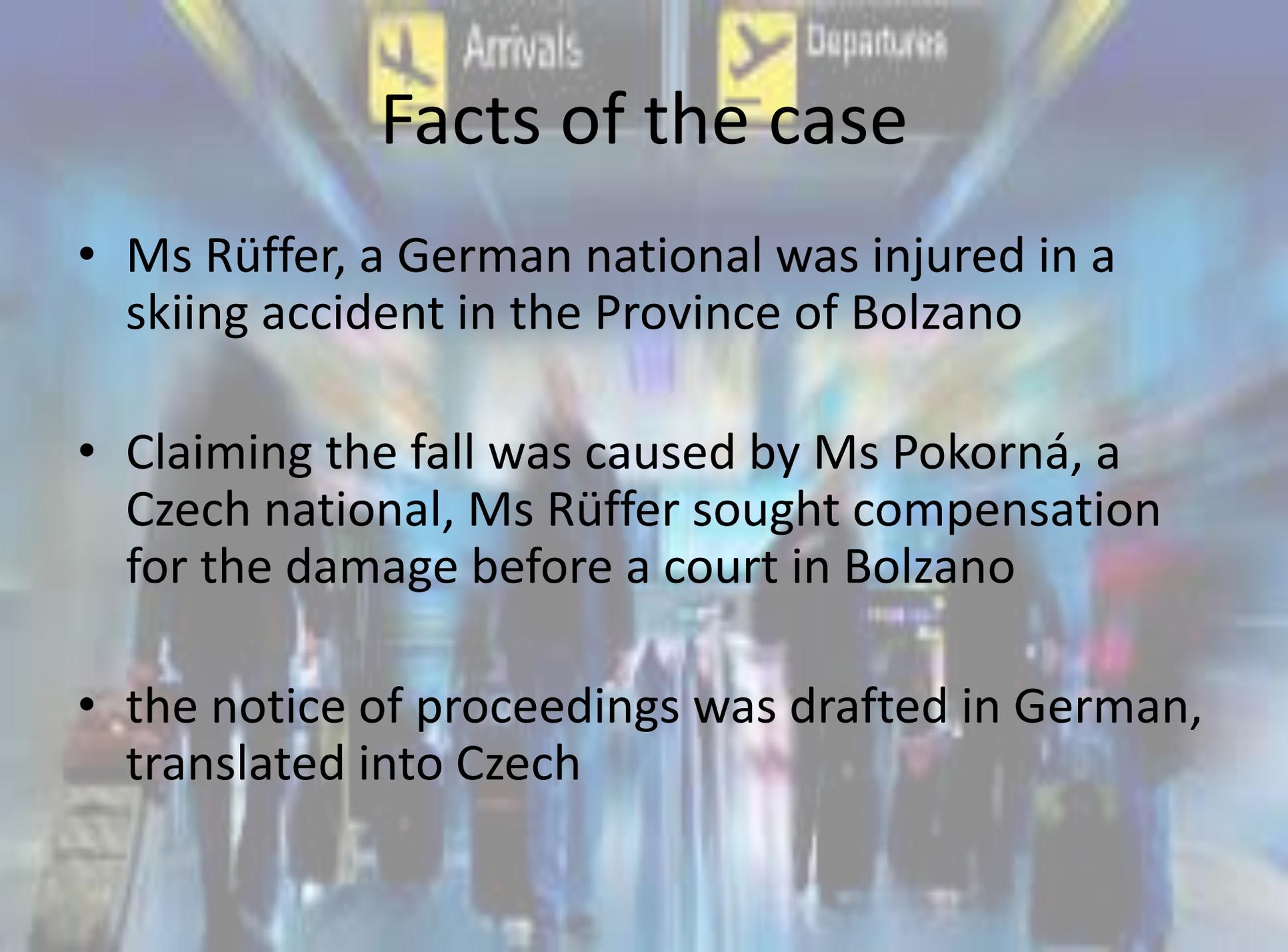


- the prohibition of discrimination based on nationality - a corner stone of the *freedom of movement in the EU*
- TFEU, Art. 18 (1) prohibits any discrimination on grounds of nationality
- evolution in both freedom of movement and citizenship evident on the example of the right to use ml



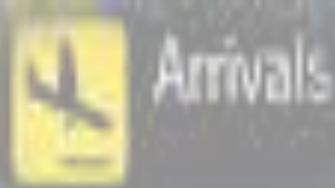
# Rüffer case

- Province of Bolzano
- German – minority language
- German speaking citizens of the Province of Bolzano may use their own language in relations with the courts and with the organs of public administration

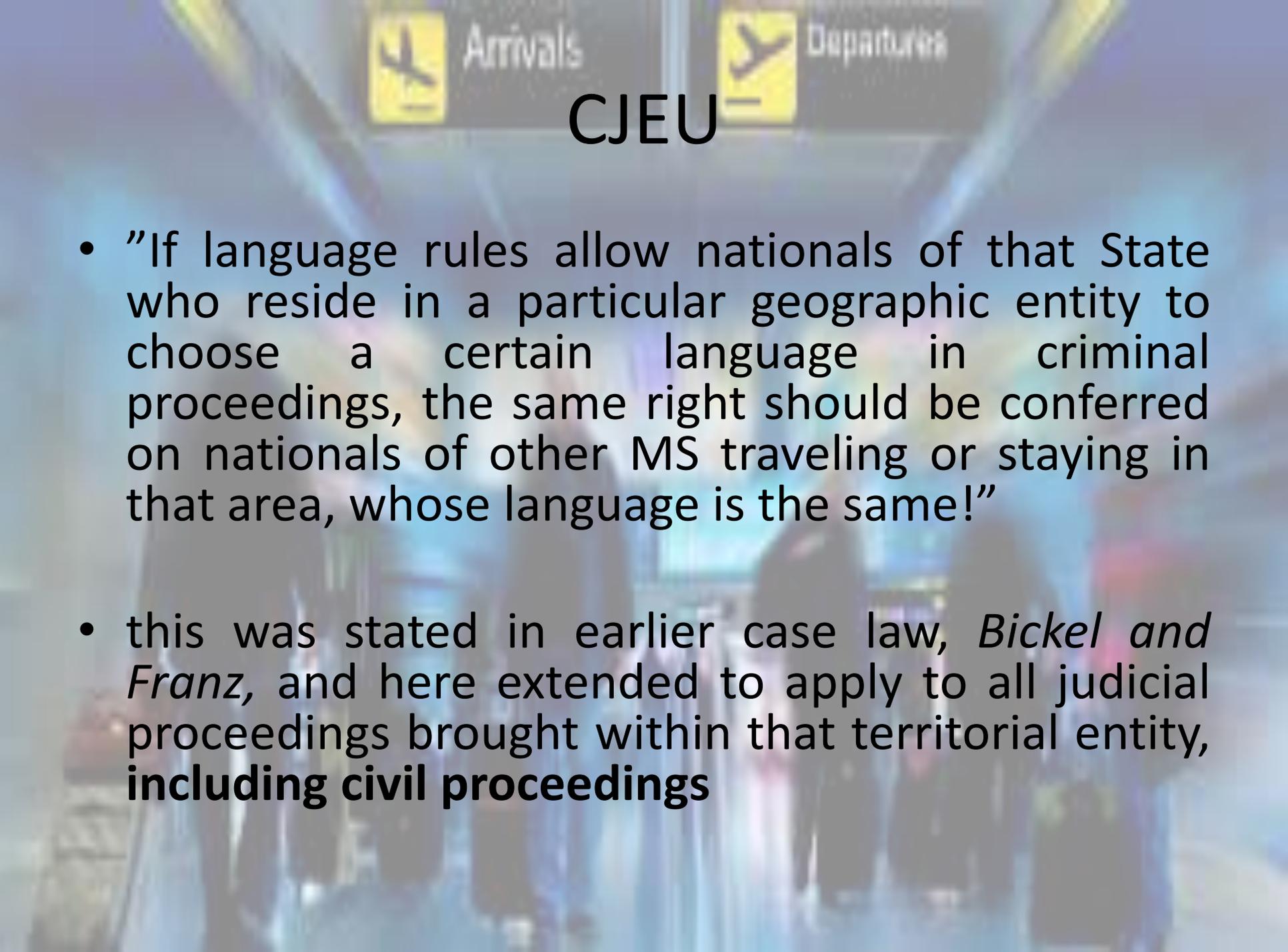


# Facts of the case

- Ms Rüffer, a German national was injured in a skiing accident in the Province of Bolzano
- Claiming the fall was caused by Ms Pokorná, a Czech national, Ms Rüffer sought compensation for the damage before a court in Bolzano
- the notice of proceedings was drafted in German, translated into Czech

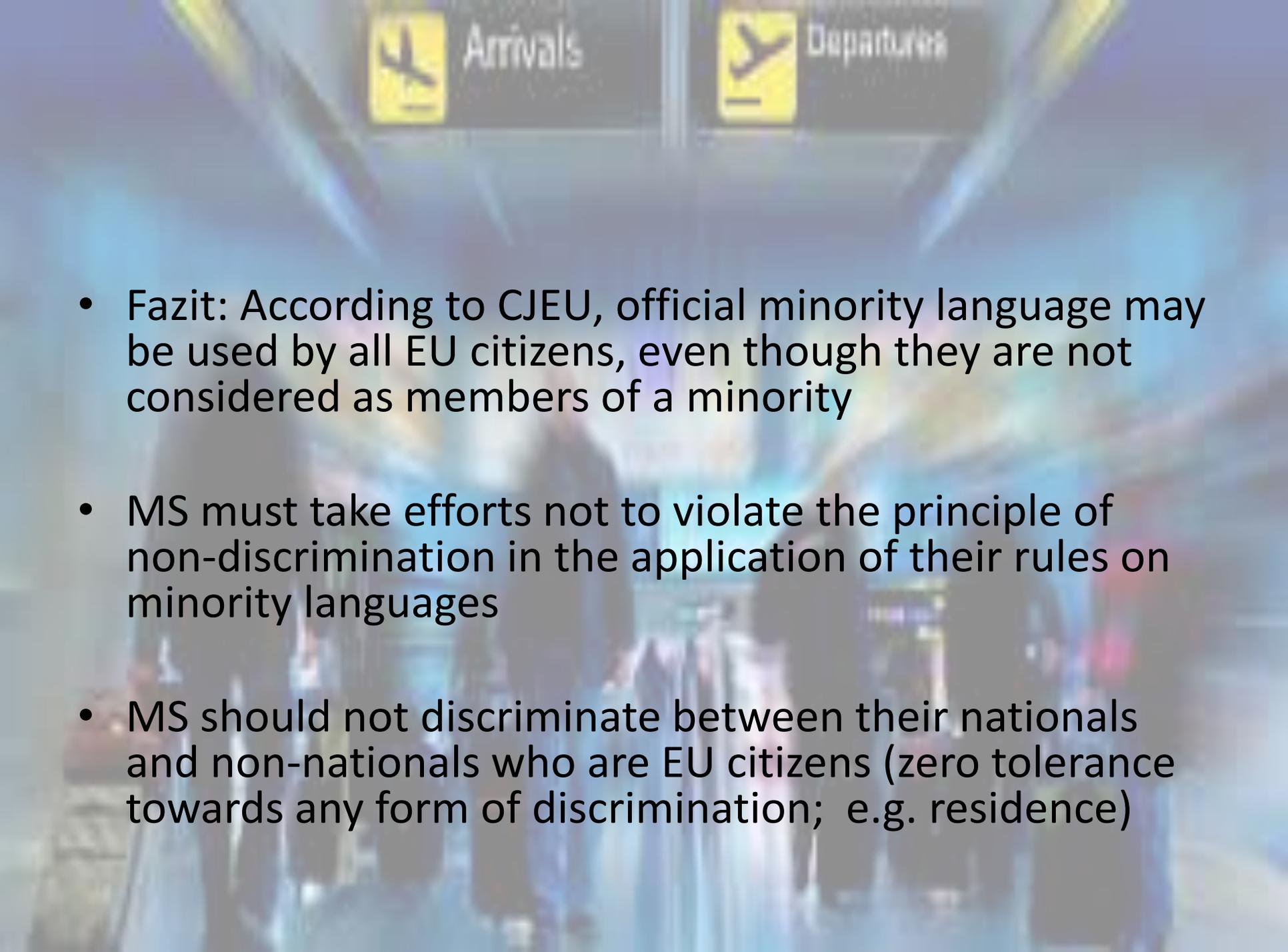


- Corte supreme di cassazione held that the provisions of the Presidential Decree No. 574/1988 (which allowed the choice of language in the Province) applied only to Italian citizens residing in the Province of Bolzano
- hence, a reference for a preliminary ruling was filed
- the referring court asked: whether Arts. 18 and 21 TFEU preclude the application of the above national legislation



# CJEU

- “If language rules allow nationals of that State who reside in a particular geographic entity to choose a certain language in criminal proceedings, the same right should be conferred on nationals of other MS traveling or staying in that area, whose language is the same!”
- this was stated in earlier case law, *Bickel and Franz*, and here extended to apply to all judicial proceedings brought within that territorial entity, **including civil proceedings**



Arrivals

Departures

- Fazit: According to CJEU, official minority language may be used by all EU citizens, even though they are not considered as members of a minority
- MS must take efforts not to violate the principle of non-discrimination in the application of their rules on minority languages
- MS should not discriminate between their nationals and non-nationals who are EU citizens (zero tolerance towards any form of discrimination; e.g. residence)

# 3 Repercussions for CI: A window of opportunity?

- In 2012 in Croatia 487 proceedings in which the parties were informed of their right to use minority language (in only 2 they opted to use it!)
- In 2013, there were 10 cases in which the parties opted for a minority language\*
- \*Municipal court Rovinj-Rovigno (Istria County)\*

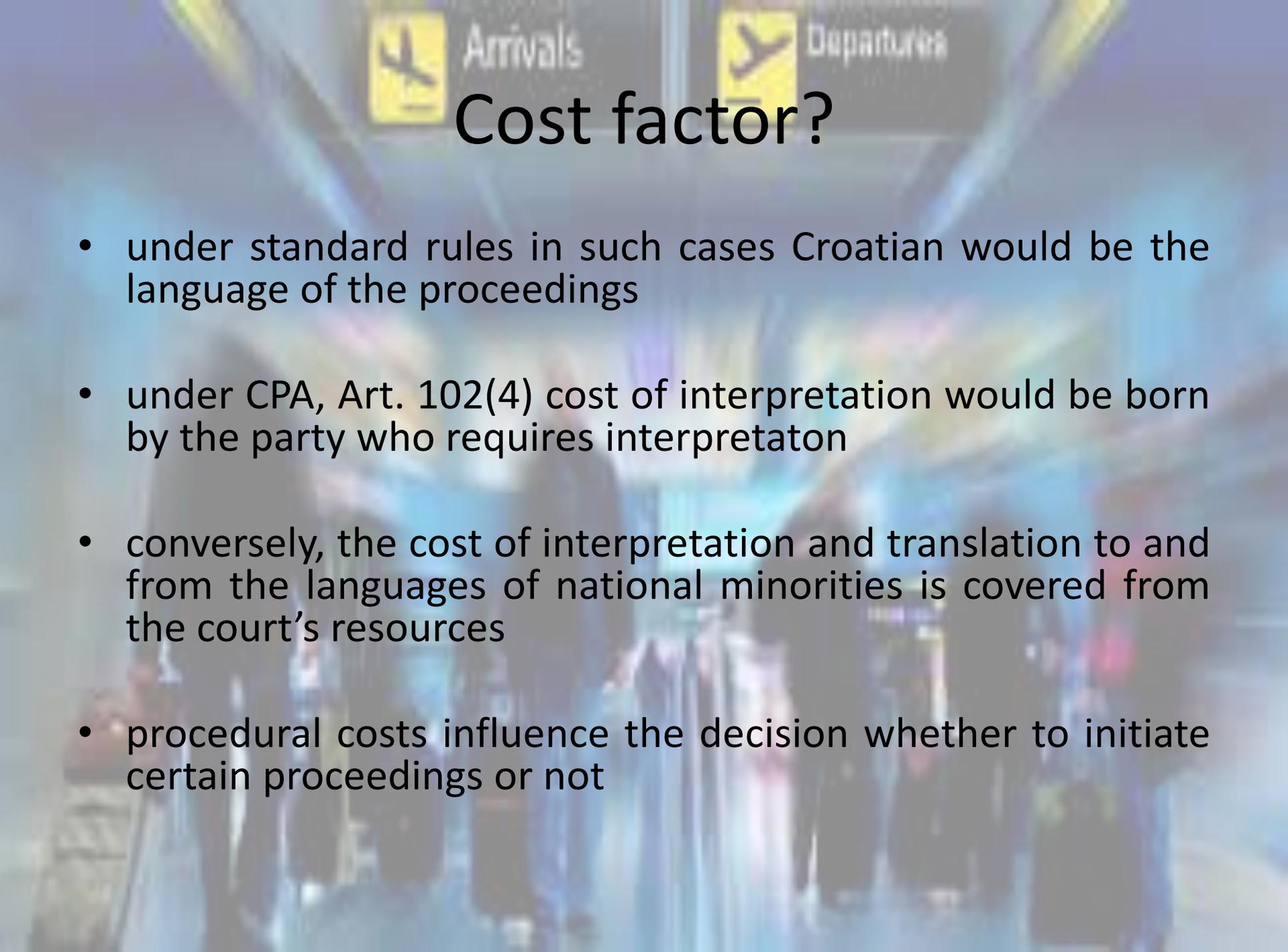


- the use of Slovene in Carinthia, Austria
- 2000: 158; 2001: 83; 2002: 69; 2003: 89; 2004: 100; 2005: 99; 2006: 87; 2007: 81; 2008: 68; 2009: 67 (Report of the CoE)
- only used to be granted to Austrian citizens (not legal entities), amended in 2011 (National Minorities Act)
- If no judge with qualifications for the Slovene language is available, the services of translators/interpreters must be used in order to ensure that Slovene can be used as the official language



# Impact of the Rüffer judgment: Eruption of cases?

- different scenarios for different regions
- Bolzano or Istria - important tourist region
- e.g. Italian citizens domiciled in Italy or another MS claiming the right to use Italian as the official language of minority (on equal footing with the Italian minority in the region)
- common disputes involving claims for damages in tort or contractual liability



# Cost factor?

- under standard rules in such cases Croatian would be the language of the proceedings
- under CPA, Art. 102(4) cost of interpretation would be born by the party who requires interpretation
- conversely, the cost of interpretation and translation to and from the languages of national minorities is covered from the court's resources
- procedural costs influence the decision whether to initiate certain proceedings or not

# References

- Act on the Use of Language and Script of National Minorities in the Republic of Croatia (Narodne novine Nos. 51/00, 56/00 and 155/02)
- Bajčić, M. and A. Martinović. 2017. EU Citizenship, Free Movement and the Use of Minority Languages in Court Proceedings. *Zbornik PFZ*, 67, (1) 107-129 (2017) Available at: [http://hrcak.srce.hr/index.php?show=clanak&id\\_clanak\\_jezik=260675](http://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=260675)
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- Civil Procedure Act (Narodne novine Nos. 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 25/13 and 89/14)
- Case C-322/13, *Ulrike Elfriede Grauel Ruffer v Katerina Pokorná*, EU:C:2014:189
- Case C-274/96, *Criminal proceedings against Horst Otto Bickel and Ulrich Franz*, EU:C:1998:115.
- Case C-216/14, *Criminal proceedings against Gavril Covaci*, EU:C:2015:686
- Decree of the President of the Republic No. 574/1988
- Directive 2010/64 on the right to interpretation and translation in criminal proceedings
- Directive 2012/13 on the right to information in criminal proceedings
- <http://archiv.bundeskanzleramt.at/DocView.axd?CobId=45600> (3rd Report of the Republic of Austria pursuant to Article 15(1) of the European Charter for Regional or Minority Languages, 2011)