

# Human rights limitations to face-recognition technology

Professor Kanstantsin Dzehtsiarou

University of Liverpool

# Facial recognition technology and human rights

- Facts of Glukhin v Russia
- Types of facial recognition technology
- Proportionality analysis in general
- Proportionality analysis in Glukhin
- What did the Court decide?
- Difficulty to bring legal challenge
- What would FRT be allowed?
- Broader implications



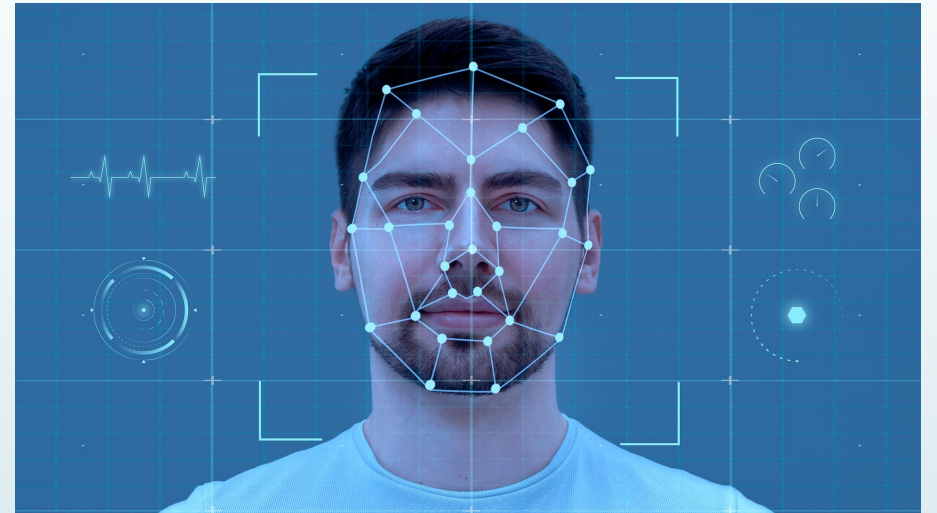
# Facts



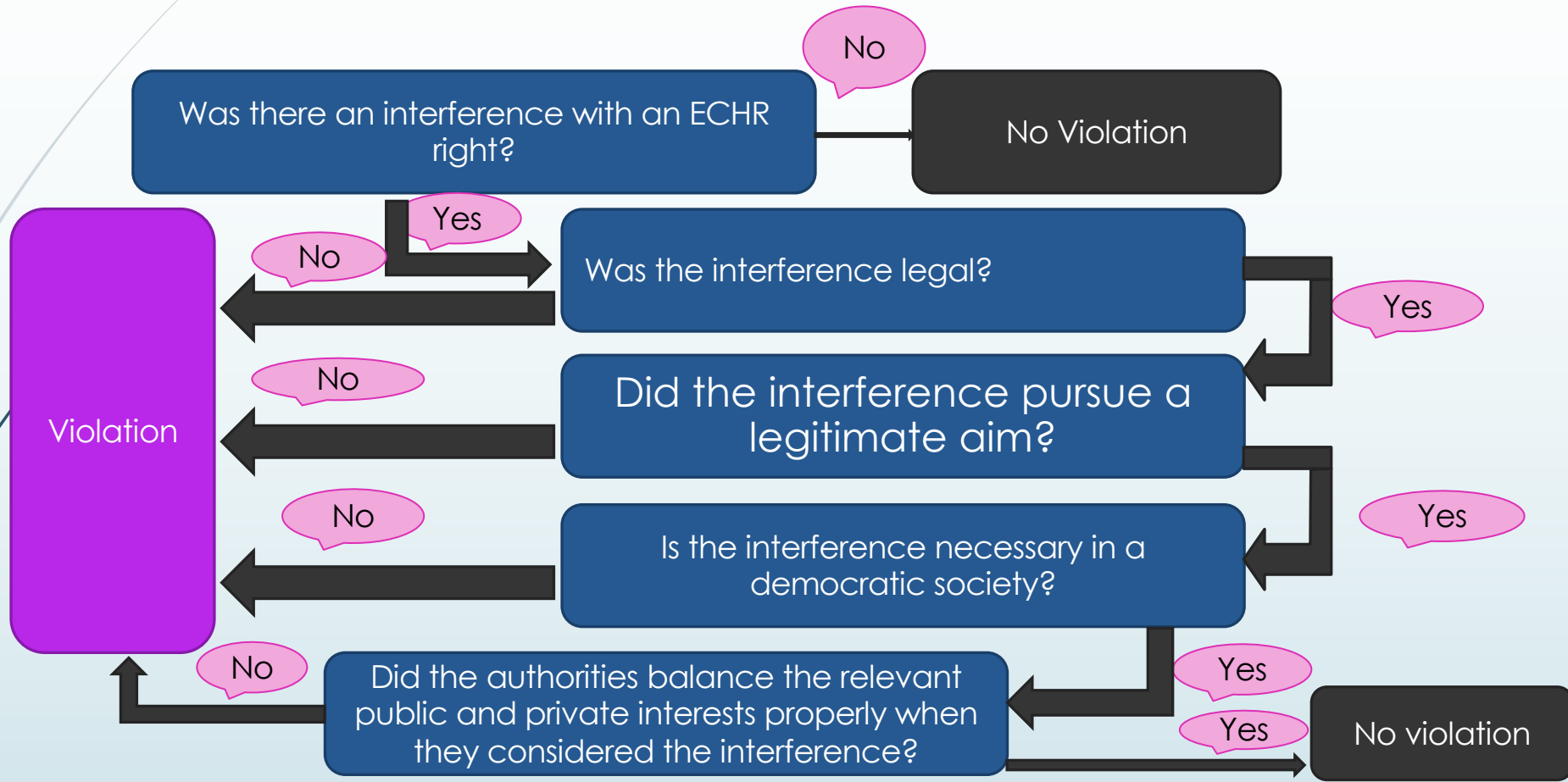
- Travelled in Moscow underground with the banner saying
- “I’m facing up to five years ... for peaceful protests”
- Photos of him were uploaded to a Telegram channel
- Seven days later he was arrested in the underground
- He was fined for failing to notify authorities for his solo demonstration
- Complaint under Articles 8 and 10

# Types of facial recognition technology

- ▶ Although the government have not admitted the use of FRT, the Court established at least two instances
- ▶ Ex post FRT – the application was recognised from social media where his name was not mentioned
- ▶ Live FRT – he was arrested in the underground two hours after his registered address was visited by police



# Proportionality



# Proportionality analysis in Glukhin

- ▶ The context – case against Russia when it is not a party to the Convention any longer
- ▶ Interference:
  - ▶ The collection and storing screenshots from Telegram
  - ▶ Using live FRT
- ▶ Lawfulness, presence of legitimate aim and necessity in democratic society were interlinked and discussed together in this case.





# Proportionality analysis in Glukhin



- ▶ Regulatory framework
- ▶ the domestic law does not contain any limitations on the nature of situations which may give rise to the use of facial recognition technology, the intended purposes, the categories of people who may be targeted, or on processing of sensitive personal data.
- ▶ Para 83

# Proportionality analysis in Glukhin

- Importance of the right engaged
- A high level of justification is therefore required in order for them to be considered “necessary in a democratic society”, with the highest level of justification required for the use of live facial recognition technology. Moreover, the personal data processed contained information about the applicant’s participation in a peaceful protest and therefore revealed his political opinion. They accordingly fell in the special categories of sensitive data attracting a heightened level of protection.
- Para 86





# Proportionality analysis in Glukhin



- Gravity of the offences:
- the nature and gravity of the offences in question is one of the elements to be taken into account
- Para 87
- The applicant committed minor offence and never was known for violence etc.
- Para 88

# What did the Court decide?

- ▶ the Court concludes that the use of highly intrusive facial recognition technology in the context of the applicant exercising his Convention right to freedom of expression is **incompatible with the ideals and values of a democratic society governed by the rule of law**, which the Convention was designed to maintain and promote.
- ▶ Violation of Article 8



# Difficulty to bring legal challenge



- ▶ Linked to covert surveillance and difficult to identify unless the state confesses
- ▶ Lowered standard of proof:  
'it was not unreasonable for the applicant to assume that facial recognition technology had been used in his case' (para 70)
- ▶ Roman Zakharov v Russia

# When would be allowed?


- ▶ Mostly speculative analysis and we don't know but
- ▶ When there is a proper regulatory framework
- ▶ When the crime is grave (terrorism offences)
- ▶ The application is selective (problems with life FRT)
- ▶ In a more democratic state than Russia?



# Broader implications



- ▶ Proceduralisation/procedural fetishism
- ▶ The case against Russia
- ▶ Specific application
  - ▶ whether the processing of biometric personal data by facial recognition technology may in general be regarded as justified under the Convention. The only issue to be considered by the Court is whether the processing of the applicant's personal data was justified under Article 8 § 2 of the Convention in the present case
- ▶ Open questions related to gravity of the crime, behaviour of the applicants etc.



Thank you  
Happy to answer to your  
questions and comments