Co-funded by the Justice Programme of the European Union 2014-2020

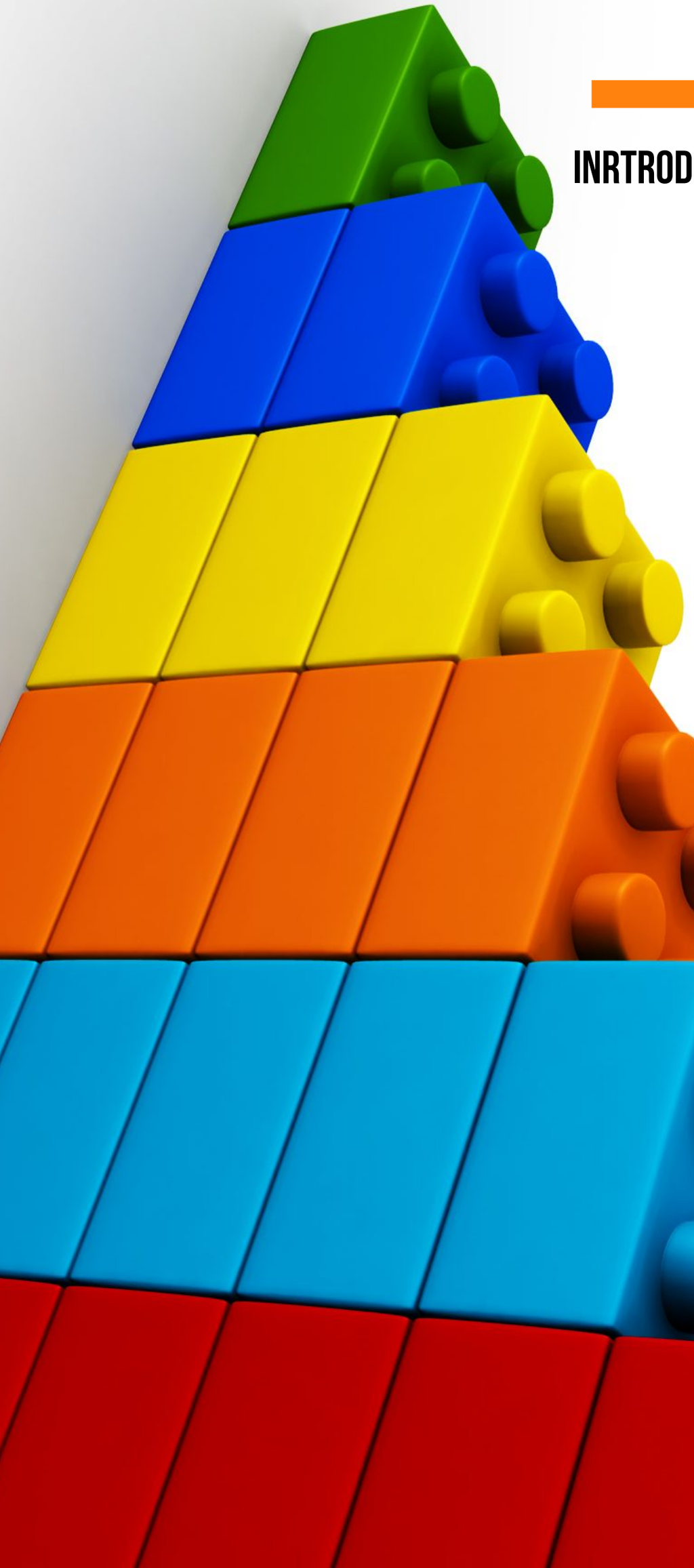
Right to information and discovery: the Italian way

NICOLA CANESTRINI

canestrinilex.com

ERA ACADEMY OF EUROPEAN LAW LISBON, 27-28 FEBRUARY 2020

"PROCEDURAL RIGHTS IN THE EU: STATUS QUO AND THE NEED FOR FURTHER MEASURES"



1

INRTRODUCTION

2

ECHR

3

EU CHARTA
AND DIRECTIVE

4

THE ITALIAN
WAY

Italian criminal justice system

"SEMI-ADVERSARIAL"

(INQUISITORIAL APPROACH)

INVESTIGATIONS ARE LED BY AN INDEPENDENT PROSECUTOR

JUDGE FOR PRETRIAL INVESTIGATION

1 INRTRODUCTION

minimum rights

ART 6/3 /A ECHR

TO BE INFORMED PROMPTLY, AND IN DETAIL, IN A COMPREHENSIBLE LANGUAGE, NATURE AND CAUSE OF THE CHARGES (ART 6/3(A) ECHR)

MATTOCCIA VS. ITALY, 2000
T. VS. ITALY, 1992

minimum rights

ART 6/3 /B ECHR

ADEQUATE TIME AND FACILITIES FOR THE PREPARATION OF A DEFENCE

ÖCALAN VS. TURKEY, 2005

2.1 ECHR

minimum rights

DIRECTIVE 2012/13/EU
F22 MAY 2012
RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS (2 JUNE 2014)

EU CHARTA
ART 47

directive 2012/13

law 2014/101

3.1 EU CHARTA AND DIRECTIVE

PRETRIAL PHASE

Register of notitiae criminis

Notice of investigation and letter of rights

Formal notice of end of investigations

4 THE ITALIAN WAY

Register of notitiae criminis

(art 335 It. criminal procedure code)

- EVERY INVESTIGATION HAS TO BE FORMALLY REGISTERED
- INFORMATION ABOUT PENDING INVESTIGATION UPON REQUEST OF SUSPECT, VICTIM AND LAWYER
- SECRECY? (SECRECY VS INFORMATION?)
- **VIOLATION?**

critics

Notice of investigation and Letter of rights

(art 369 and 369 bis It. criminal procedure code)

- NOTICE IN CASE OF “GUARANTEED ACT” (SEIZURE, ARREST, SEARCH, ..)
- LETTER OF RIGHTS
- **VIOLATION?**

critics

Arrest and pretrial detention order?

(art 293, 294 and 386 lt. criminal procedure code)

4.2BIS PRETRAIL PHASE

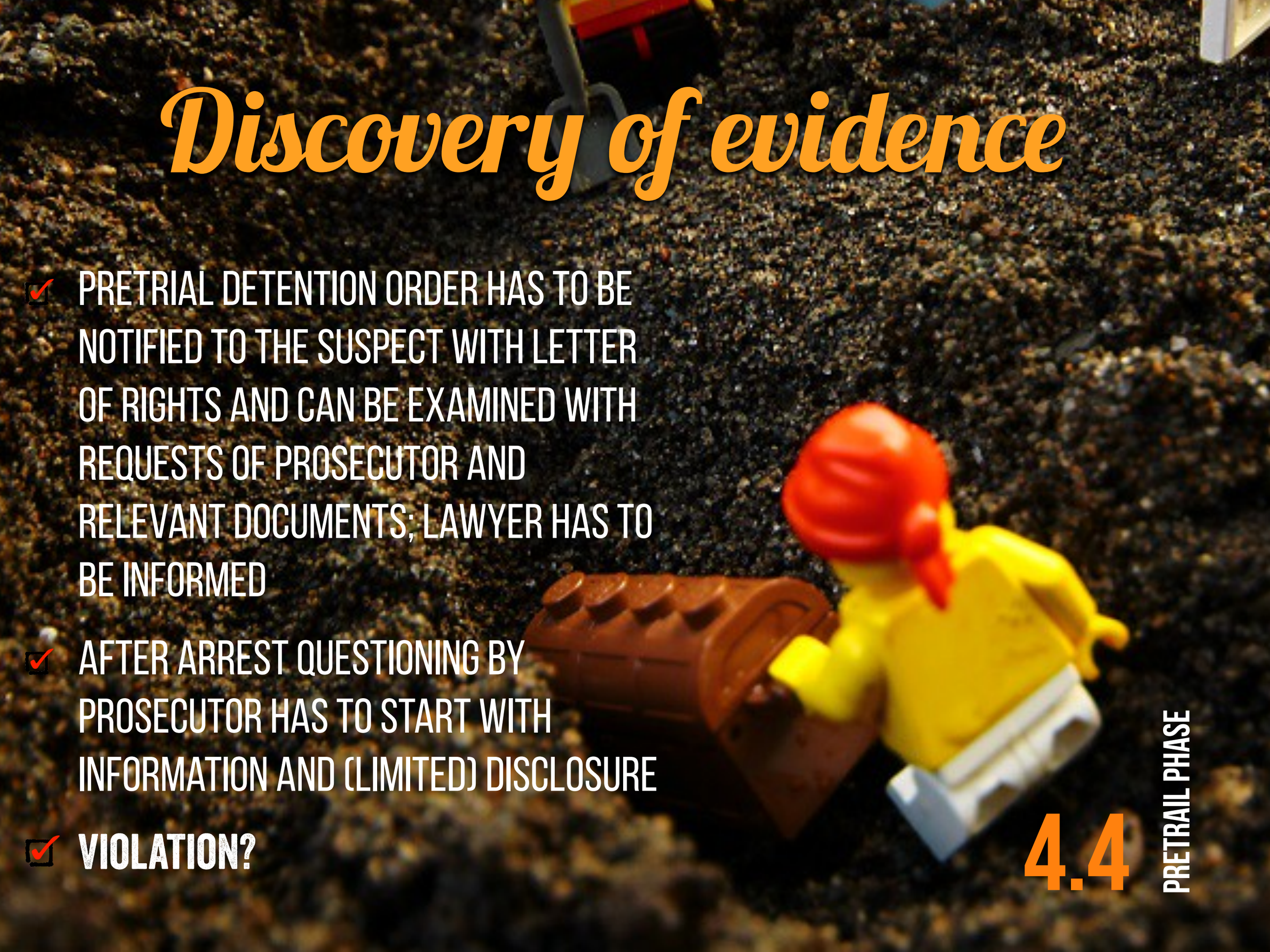
Formal notice of end of investigations

(art 415 bis It. criminal procedure code)

- ✓ FORMAL NOTICE TO THE SUSPECT ON THE CONCLUSION OF PRELIMINARY INVESTIGATIONS
- ✓ "SHORT DESCRIPTION OF THE CHARGE, THE RULES OF LAW ALLEGEDLY VIOLATED, THE DATE AND PLACE OF THE ACT"
- ✓ NOTICE THAT THE FILE OF THE INVESTIGATIONS CAN BE EXAMINED AND COPIED (20 DAYS TERM?)
- ✓ <u>DISCLOSURE WITH NO EXCEPTION WHATSOEVER</u>
- ✓ **VIOLATION?**

Discovery of evidence

- ☑ PRETRIAL DETENTION ORDER HAS TO BE NOTIFIED TO THE SUSPECT WITH LETTER OF RIGHTS AND CAN BE EXAMINED WITH REQUESTS OF PROSECUTOR AND RELEVANT DOCUMENTS; LAWYER HAS TO BE INFORMED
- ☑ AFTER ARREST QUESTIONING BY PROSECUTOR HAS TO START WITH INFORMATION AND (LIMITED) DISCLOSURE
- ☑ **VIOLATION?**



Full disclosure of case file (court and prosecutor)

critics

canestrinilex.com

LinkedIn