



The Belgian experience with EIO in obtaining e- evidence

MEIOR Conference

Judicial scrutiny in EIO proceedings – Leuven 20240324



Relevance of EIO

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(Not just)
Sky ECC





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No adequate
control by
courts

Article 29 EIO Act

In the context of criminal proceedings conducted in Belgium, evidence may not be used:

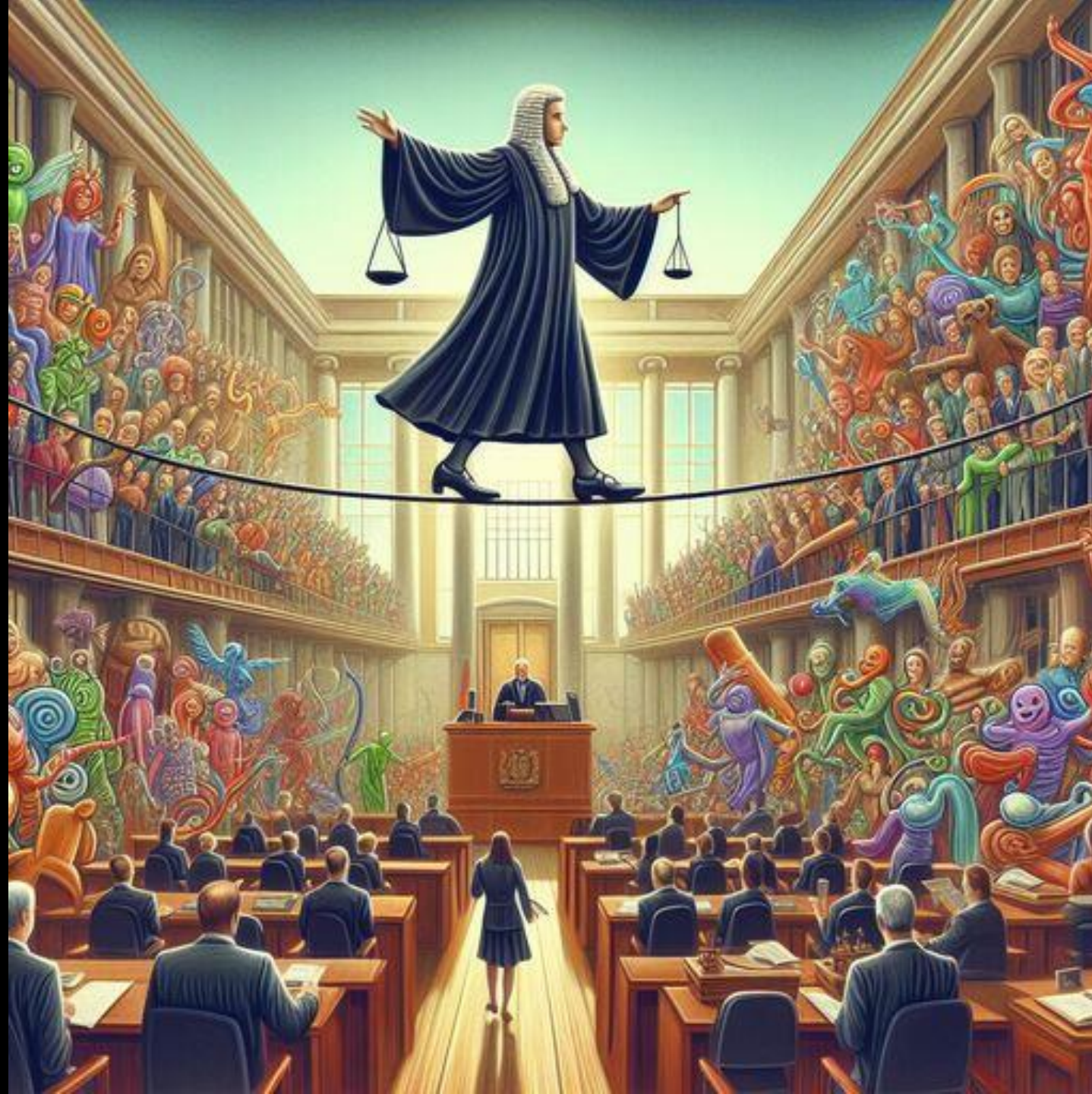
1° that has been **collected irregularly** in the executing State if the irregularity:

- according to the law of the executing State, results from the violation of a formal requirement prescribed under penalty of nullity;

- affects the reliability of the evidence; or

2° the use of which constitutes **a violation of the right to a fair trial**

- Fair trial
- Accuracy



- Purposefulness
- Timely procedure

Equilibrium

- **Mutual Trust – presumption: no need to add all documents main file or foreign legislation**
- **Only if concrete elements to doubt legality or fair trials**
- **Judge to decide on the basis of the documents before him/her**

Opinion AG Capeta, CJEU C-670-2022, *M.N. v. Staatsanwaltschaft Berlin*

- Criminal law systems of Member States differ significantly
- But this does not mean that one system protects the fundamental rights of suspects and accused persons while another breaches them
- EU judicial cooperation in criminal matters relies on the assumption that all Member States respect fundamental rights

Control: AG CJEU

Role of court of the issuing authority of EIO

- **Not** assess whether the underlying measures through which the evidence was gathered were legally undertaken in the executing Member State (France)

Control: AG CJEU

Role of court of the issuing authority of EIO

- **But** check whether in accordance to national law the data gathered by the interception of telecommunications for the purposes of one criminal procedure may be transferred to another criminal procedure

Control – High Court Netherlands

It follows from this principle of trust that the Dutch criminal court does not review the lawful application of powers applied by the authorities of the other (Member) State. After all, it is assumed that this application has taken place lawfully, because both states assessed the application of the relevant powers when entering into the treaty.

Need for more?



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Thank you

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