



- EIO proceedings and legal remedies (LR)
 - Focus on LR available in the executing MS;
 - Scope of application;
 - No suspensive effect as a rule.

II. Main issues

- The 'effectiveness' of LR in the executing MS;
- The 'overall fairness' of the proceedings;
- The admissibility of evidence gathered breaching fundamental rights and transferred to the issuing MS.

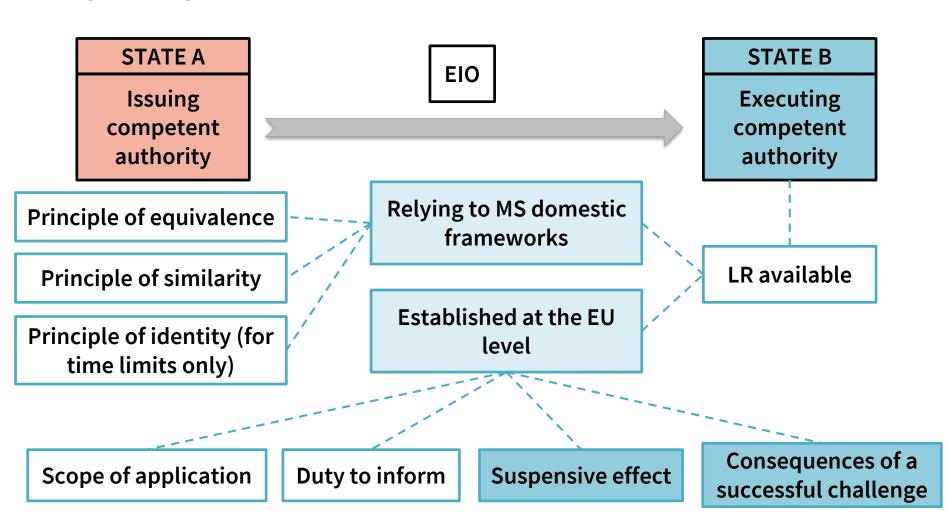
III. Some concluding remarks

EIO proceedings and LR A focus of LR available in the executing MS (I)



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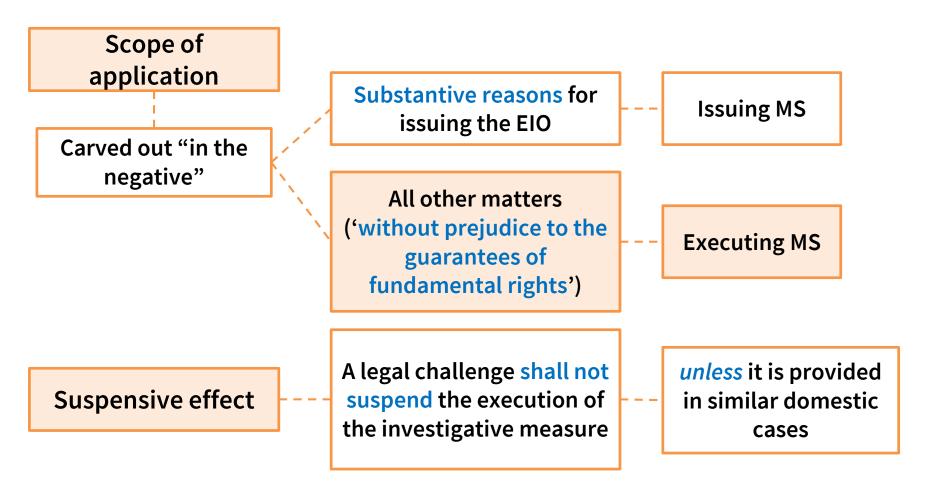
Specific provision devoted to LR (Article 14 EIO Directive)



EIO proceedings and LR – A focus of LR available in the executing MS (II)

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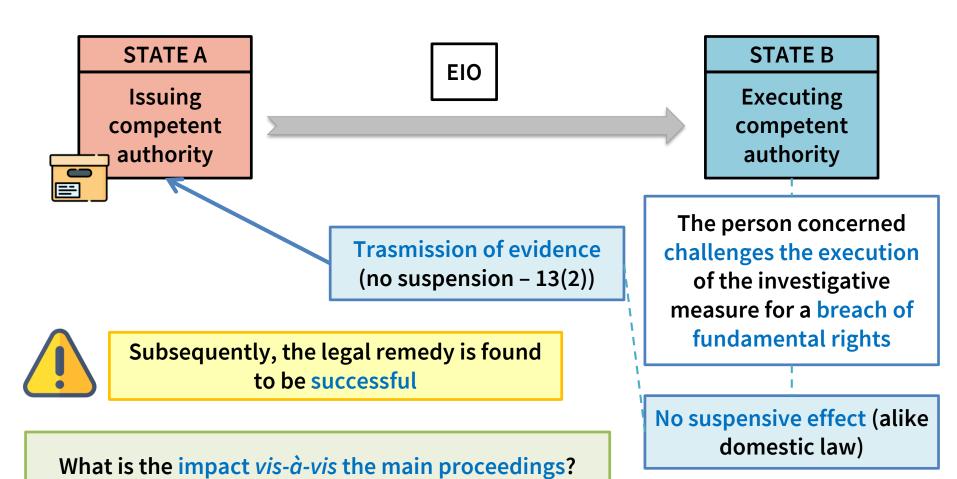


Glancing at the main issue at hand...

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A (not so) fictional case



The obligation of "taking into account" the successful challenge: to what extent, exactly?

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Specific provision that addresses the issue (Article 14(7))

Article 14(7)

The issuing MS shall take into account a successful challenge against the recognition/execution of an EIO

in accordance with its domestic law

How to assess such an evidence, after a successful challenge in the executing MS grounded on a breach of fundamental rights?

Fairness of the proceedings

Defence rights

Right to an effective remedy

The 'fairness test' (I)

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When assessing evidence obtained through the EIO

'Homogeneity clause' – Article 52(3) - ECHR standards are the minimum standards in FU law

minimum standards in EU law → the way in which As a rule, the evidence was domestic matter Admissibility of obtained evidence In exceptional Whether the **Article 6 ECHR** instances, issues whole of fairness may proceedings were arise fair

Alleged unlawfully obstained evidence

Examination of the 'unlawfulness'

If so, whether it relates to the breach of the

Whether defence rights have been respected

The 'fairness test' (II)

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Some examples

Searches and seizures breaching legal privilege

by the suspect in breach of the right not to self-incriminate or under coercion

Unlawful wiretapping or collection of data

Co-accused statements collected in the absence of a lawyer

whether the applicant was given the opportunity

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To challenge the evidence

and to oppose its use

Yüksel Yalçinkaya [GC] (2023)

[ECtHR]

whether the evidence produced for or against the defendant was presented in such a way as to ensure a fair trial

the quality of the evidence

e.g., reliability

the importance of the evidence

e.g., sole and decisive

The 'fairness test' (III)

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What does it entail?

STATE A

Issuing competent authority

"thorough examination"

There shall be the effective possibility to oppose the use of such an evidence in the issuing MS

otherwise – breach of Article 6 ECHR?

EIO

The issuing MS shall <u>take into account</u> a successful challenge against the recognition/execution of an EIO in accordance with its domestic law

An obligation to provide a reasoned decision *on this specific issue*?

otherwise – breach of Article 6 ECHR?

STATE B

Executing competent authority

Successful challenge

No impact, in itself, on the main proceedings

No effective possibility to oppose the evidence use

Concluding remarks

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- At least on one occasion, the defendant shall have the effective possibility to challenge the evidence use (either in the executing or in the issuing MS);
- 'Effectiveness' means that the outcome of such procedure may lead to the inadmissibility of that evidence ('oppose its use');
- Quid iuris if the issuing authority does not take into account the successful challenge in the executing MS?

80. Against this background, the Court considers that the absence of an appropriate response from the domestic courts *vis-à-vis* a substantiated claim that a certain piece of evidence has been obtained in breach of statutory requirements or the rights and freedoms protected by the Convention and the Protocols thereto would, in principle, be incompatible with the requirements of a fair trial, including, in particular, where the evidence was of decisive importance for the conviction.

Budak v Turkey (2021)**

The way forward

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- What an 'appropriate response' could be?
- Mutual recognition hinges on mutual trust
- Mutual trust relies on <u>simple and clear rules</u> (and thus EU law should not rely on the fragmented ECtHR case-law) see, by analogy, AG Ćapeta, C-175/22, paras. 62-73
- Should a violation of a rights or freedom enshrined in the ECHR be found in the executing MS, that evidence (i) should not be transferred to the issuing MS; (ii) if already transferred, should not be admitted at trial in the issuing MS.
- No issues of sovereignty?







Thank you for the attention!

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