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Non-Suspended Execution of an EIO –
Examining the Effectiveness of Legal
Remedies and Their Impact on Evidence
Admissibility



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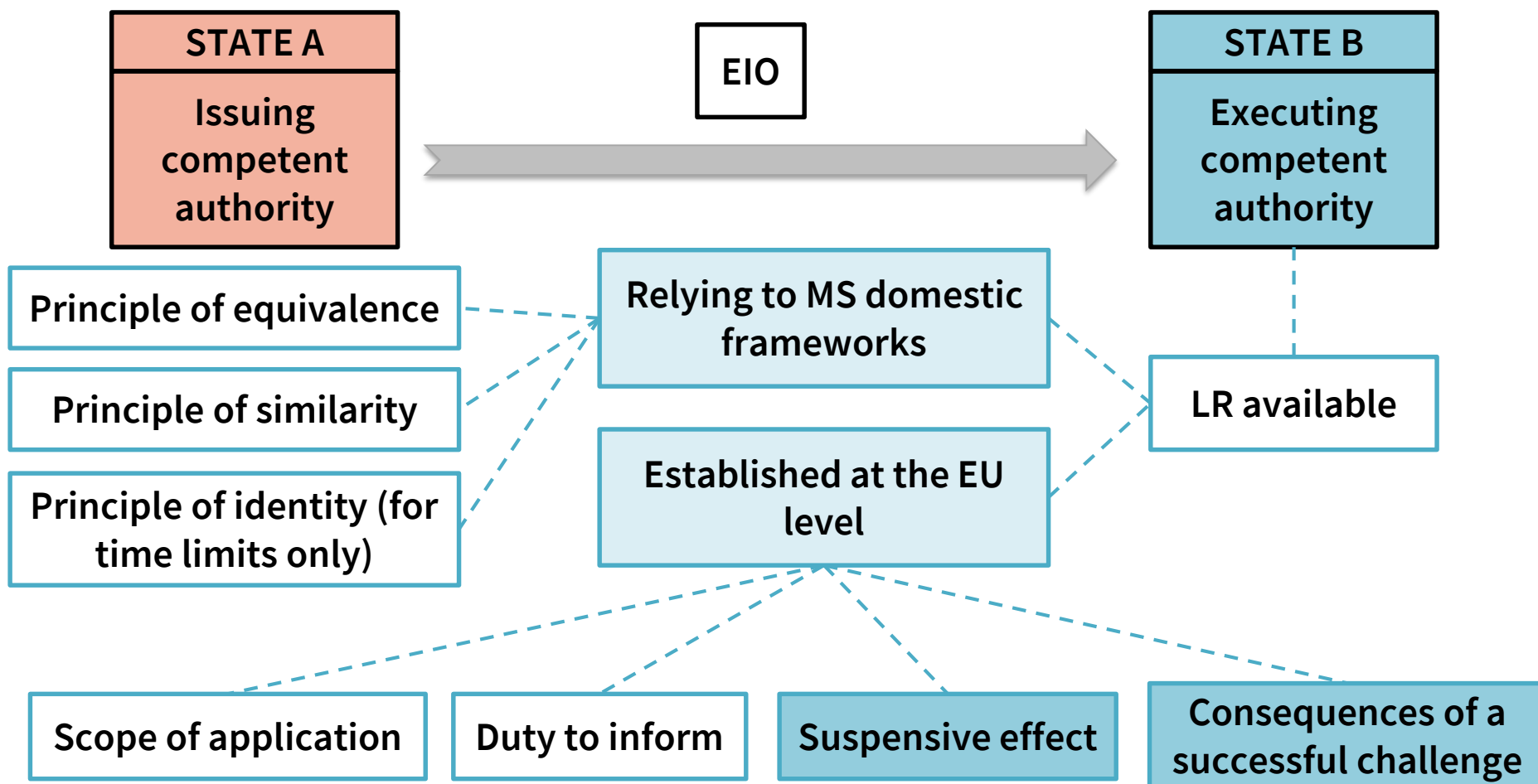
KU Leuven–Leuven Institute of Criminology, 26th March 2024

- I. 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**.

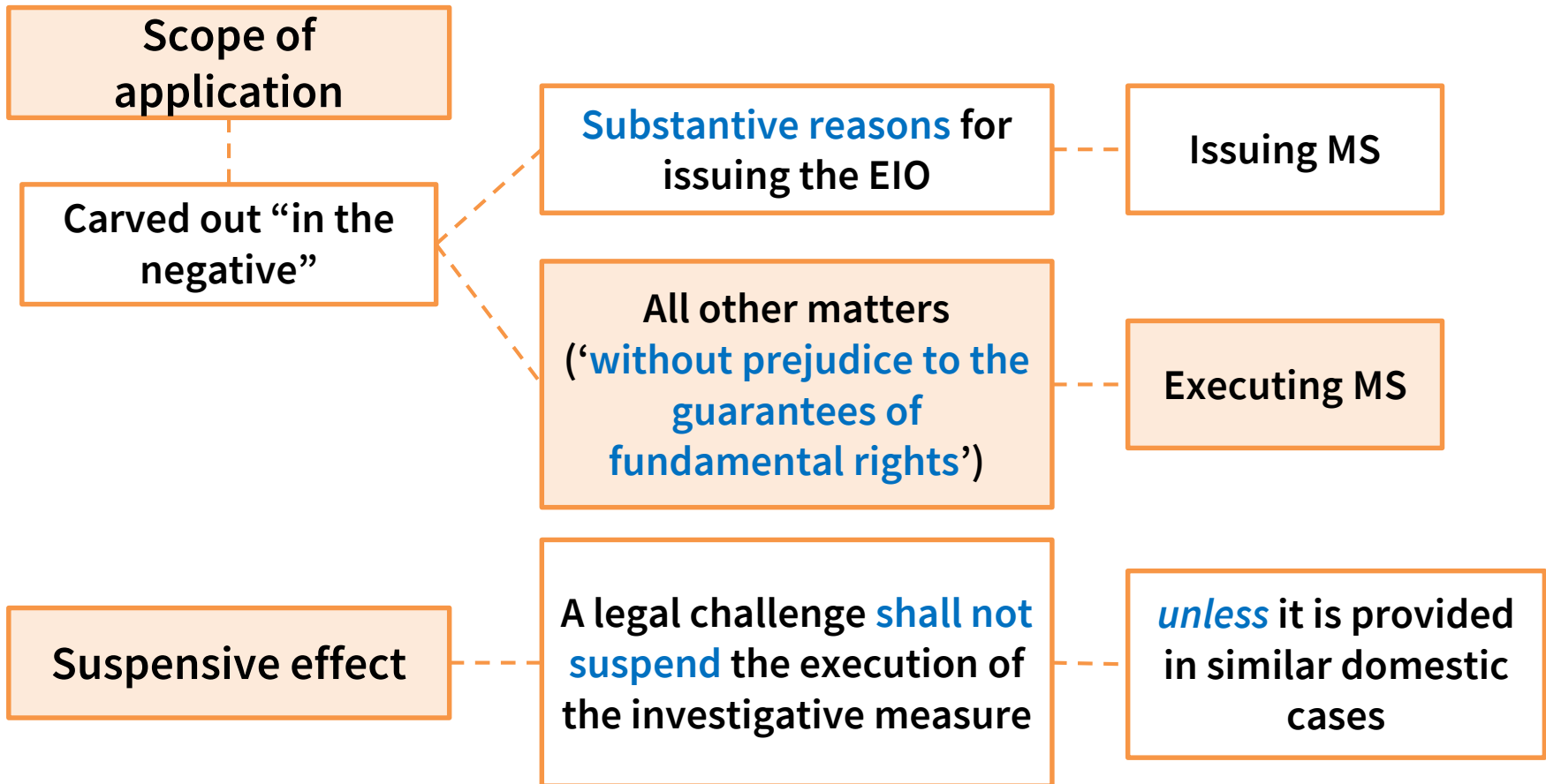
- III. Some **concluding remarks**

- Specific provision devoted to LR (**Article 14 EIO Directive**)



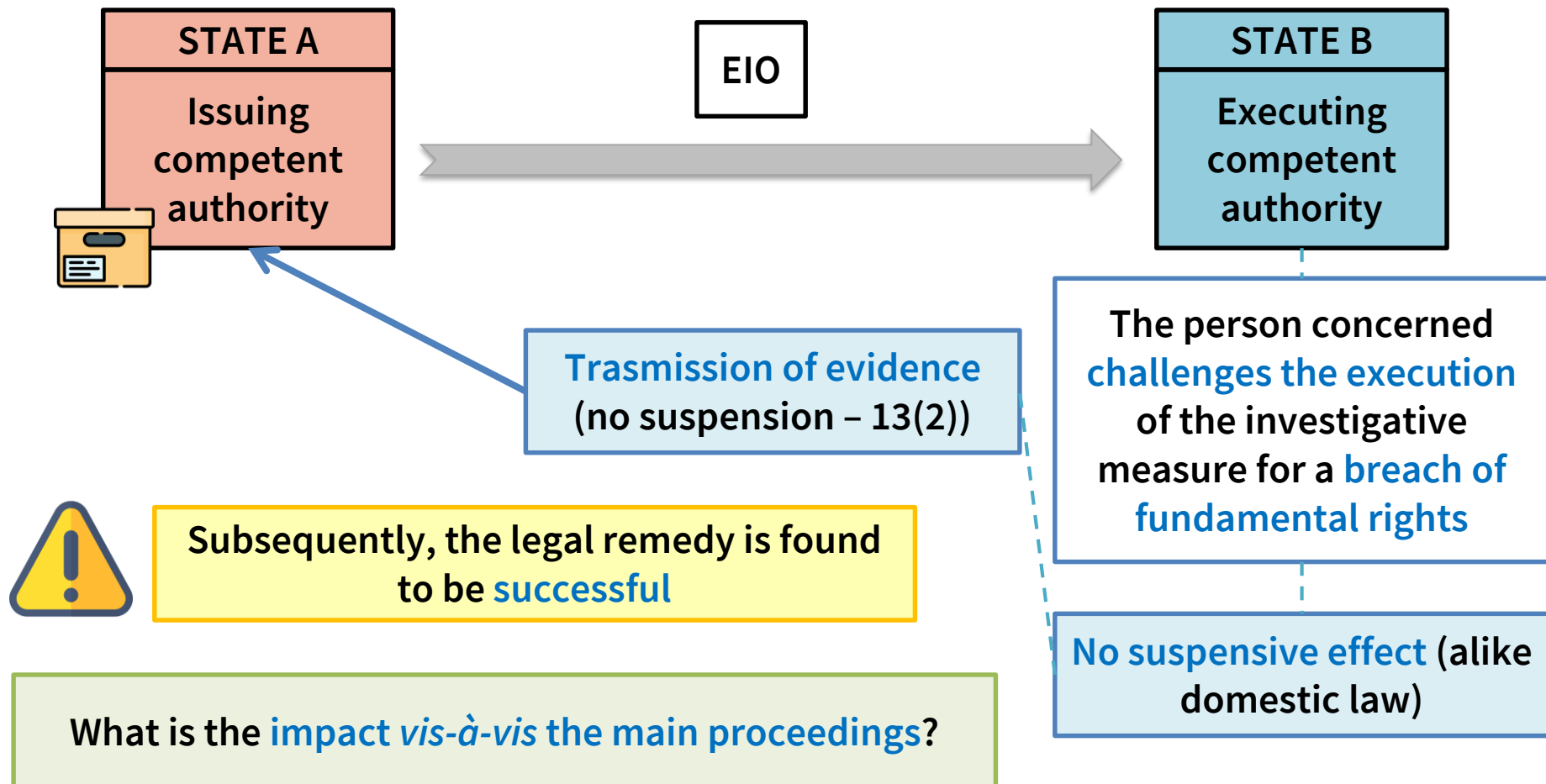
EIO proceedings and LR – A focus of LR available in the executing MS (II)

FACULTY OF LAW, ECONOMICS AND FINANCE



Glancing at the main issue at hand...

■ A (not so) fictional case



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

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



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

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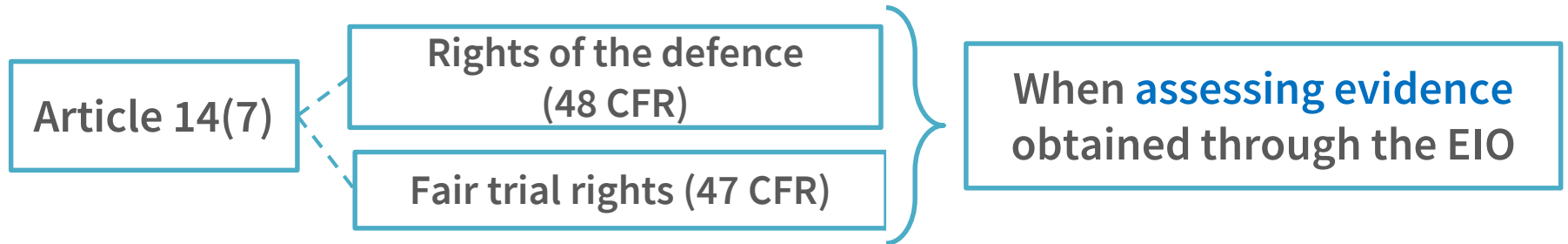
Fairness of the proceedings

Defence rights

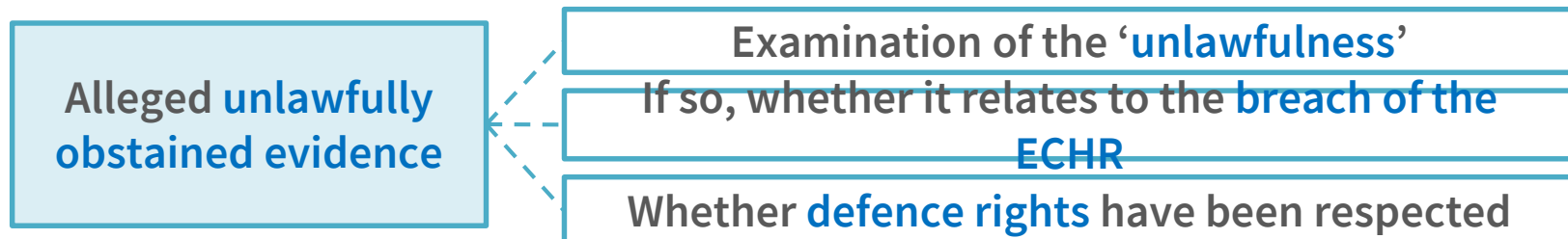
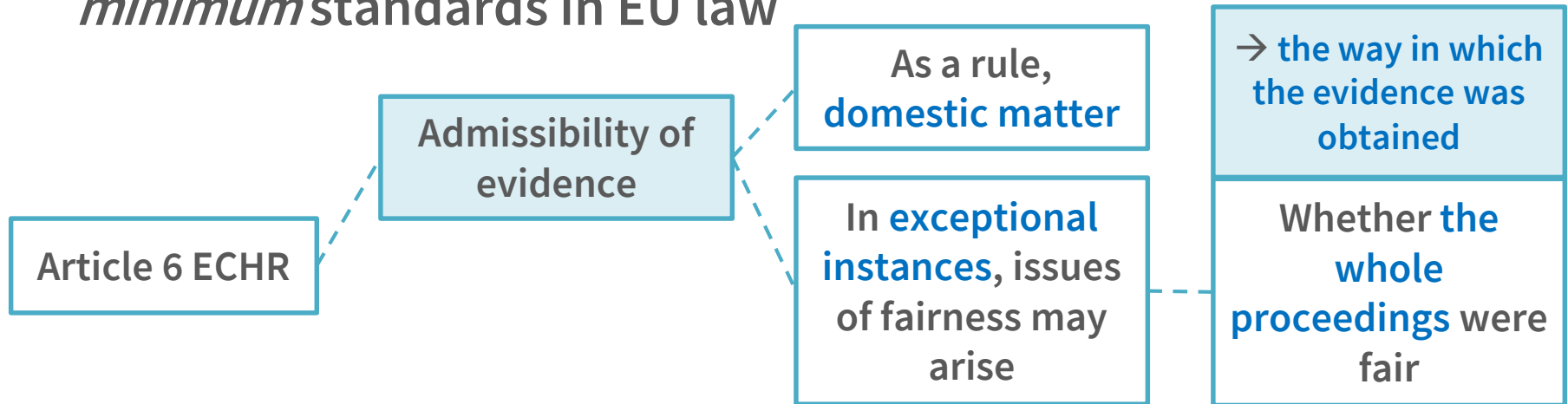
2

Right to an effective remedy

The 'fairness test' (I)



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



The 'fairness test' (II)

Some examples

Searches and seizures breaching legal privilege

Statements rendered 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

Yüksel Yalçinkaya
[GC] (2023)
[ECtHR]

whether the applicant was given the opportunity

To challenge the evidence

and to oppose its use

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

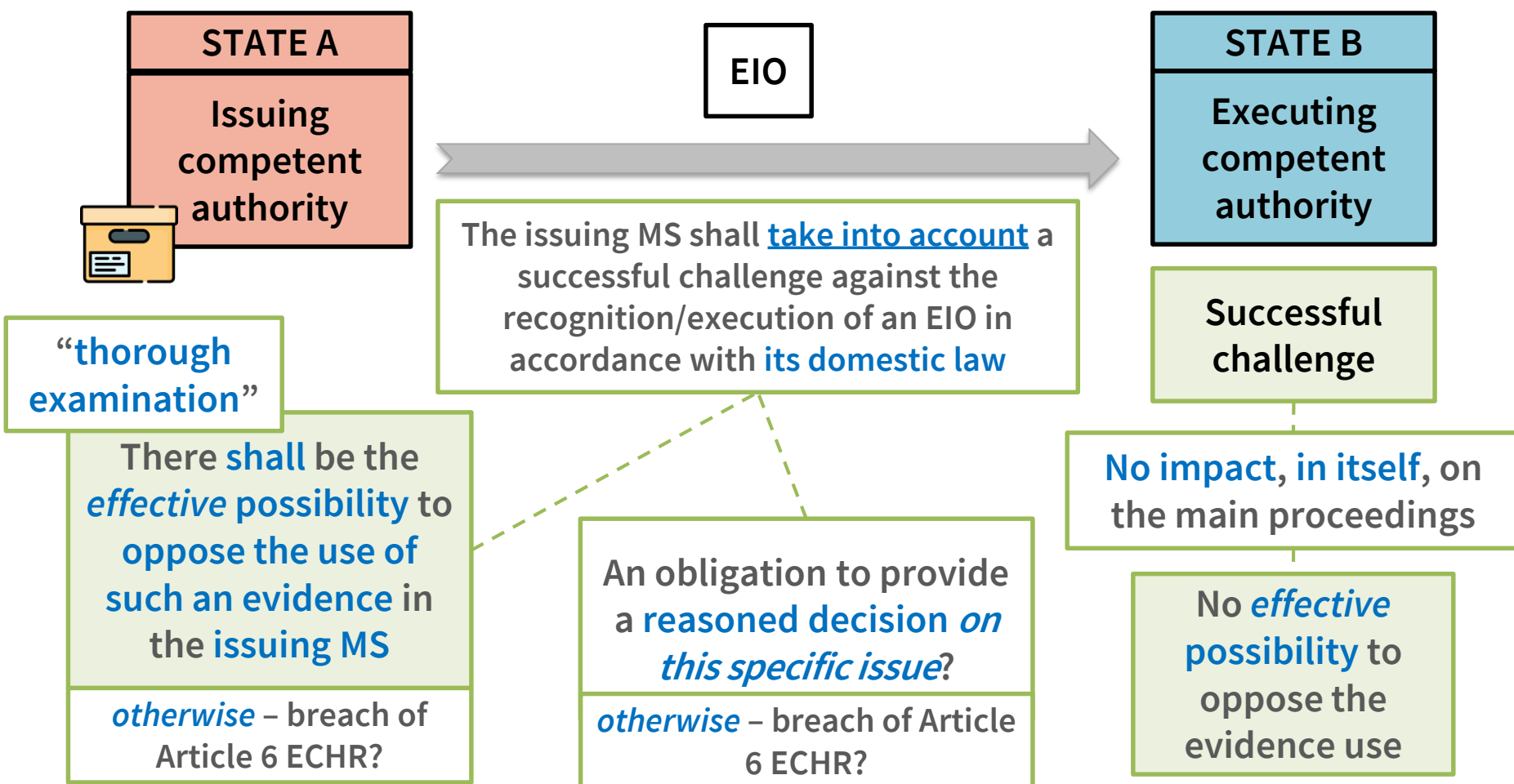
e.g., reliability

the importance of the evidence

e.g., sole and decisive

The 'fairness test' (III)

What does it entail?



Concluding remarks

- 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)

- What an ‘**appropriate response**’ could be?
- Mutual recognition hinges on **mutual trust**
- Mutual trust relies on **simple and clear rules** (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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