

Avotiņš v. Latvia

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Public International Law: Alternative
Seminar

Three cases

- Bosphorus v. Ireland
 - Michaud v. France
 - Avotiņš v. Latvia
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Bosphorus presumption

- Meaning?
 - Conditions?
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The so-called Bosphorus presumption

- The protection of rights guaranteed in the ECHR by EU law is equivalent (comparable) to the protection given by the ECHR (and the ECoHR)
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Why the Avotiņš case is important

- Delivered after the 2/13 CJEU Opinion
 - Grand Chamber (16 to 1 vote)
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Facts

- The recognition and enforcement of a judgment under the Brussels I Regulation when allegedly the right to a fair trial of the obligated subject was breached
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The evaluation by the ECHR

- Fair hearing and mutual trust
 - Art. 52 (3) EU Charter ensures equivalent protection
 - “Margin of manouvre”
 - “Deployment of the full potential of the supervisory mechanism”
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Cont.

- The request of preliminary ruling as an integral part of the evaluation of the breach of the right to a fair trial
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Rebuttal of the Bosphorus presumption

- ❑ The protection of the ECHR rights “manifestly deficient”
 - ❑ Is mutual trust reconcilible with the ECHR?
 - ❑ Too mechanical application of the exceptions to mutual trust – burden of proof (art. 34 odst. 2 Brussels I Reg.)
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No ECHR breach found

- A specific case argument
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