

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?

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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Sanofi Pasteur v. France (Appl. No. 25137/16)

- Courts obliged to submit an application for preliminary ruling under art. 267 TFEU must justify in their reasoning why they did not do so, despite the plea to that effect by a party (para 69-70)
 - If the courts do not comply with such obligation, they violate art. 6 (1) ECHR – an access to court aspect
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