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**MUTUAL RECOGNITION OF JUDICIAL DECISIONS
AND THE RIGHT TO A FAIR TRIAL WITH SPECIAL
FOCUS ON THE ECHR'S FINDINGS IN THE CASE
OF AVOTIŃŠ V. LATVIA**

ABSTRACT

In Avotiņš v. Latvia, the European Court of Human Rights (from now on: ECHR; Court) was questioning whether the Conventional right to a fair trial applies in cases of mutual recognition of judicial decisions on EU level. Without dealing with errors of fact or law allegedly made by a national court, the Court found it necessary to determine whether the national court has infringed the rights and freedoms protected by the Convention. Although the applicant claimed that the national court breached the Brussels I Regulation and thus violated the right to a fair trial, the ECHR concluded that it is not up to the Court to decide on the compliance of national law with international treaties and EU law. As it can be understood from the judgment, the ECHR holds that interpretation and application of the provisions of the EU regulations fall under the jurisdiction of the national courts and the Court of Justice of the European Union (from now on: the CJEU). However, the ECHR reaches a conclusion that the Contracting States are obliged to take care of the parties' procedural rights when applying the EU law for the reason that provisions of the EU law must not be applied mechanically, without bearing in mind the duty of taking into account the rights protected by the Convention.

In this paper, the authors shall analyze the relationship between the ECHR and the CJEU taking into account and resorting to the ECtHR's findings in the case of Avotiņš v. Latvia.

Keywords: *The European Court of Human Rights, the Court of Justice of the European Union, the right to a fair trial, mutual recognition and enforcement of judicial decisions*

1. INTRODUCTION

All Contracting States of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹ (from now on: European Convention) are compelled to guarantee the respect of the fundamental human rights. Procedural human right guarantees should be applied in all cases, not only those of domestic nature but also in all legal matters of cross-border nature. Article 6/1 of European Convention has a leading role in this as it represents one of the most fundamental guarantees for the respect of procedural human rights and the rule of law.² In short, art. 6/1 compels the States to ensure that in all civil proceedings the parties have access to an independent and impartial tribunal, that their procedural rights are duly protected during the proceedings as well as that a decision on their rights is effective and made without unnecessary delays.³ On the other hand, the need to create an area of freedom, security, and justice as an area without internal frontiers, sometimes requires a waiver of absolute control of procedural guarantees embodied in the Convention in favor of realization of the principle of mutual trust between the EU Member States.⁴

In Europe, the free movement of judicial decisions is the key element of cooperation between national courts in civil matters. Therefore, the general assumption that fundamental rights are properly respected throughout Europe is of utmost importance. From this assumption - the principle of mutual trust - arises the principle of mutual recognition.⁵

The principle of mutual recognition requires that a judicial decision is recognized and executed regardless of the fact that it has been brought by a court of another

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette, International Treaties, No. 18/97, 6/99 – consolidated version, 8/99 – correction

² Cf. with Rozakis, C., *The Right to a Fair Trial in Civil Cases*, Judicial Studies Institute Journal, Vol. 4, No. 2, 2004, p. 96-106, p. 96

³ *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice* (Art. 6/1 of European Convention)

⁴ See Mitsilegas, V., *Mutual Recognition, Mutual Trust, and Fundamental Rights after Lisbon*, in: Mitsilegas, V., Bergström, M., Konstantinides, T. (eds), *Research Handbook on EU Criminal Law*, Edward Elgar, 2016, pp. 148-167

⁵ Tulibacka, M., *Europeanization of Civil Procedures: In Search of a Coherent Approach*, *Common Market Law Review*, 46.5, 2009, pp- 1527–1565, p. 1542; CJEU in Case C-168/13. - *Jeremy F*, C-491/10, *Zarraga*, 30 May 2013

Member State and accepted as a decision of a domestic court.⁶ What it does is that it enables the free movement of judicial decisions as a necessary consequence of creating an area without internal borders in which people can move, live and work freely, knowing that their rights are fully respected.⁷ Encouraging the free movement of judgments enhances the proper functioning of the internal market which would otherwise be the subject of long-lasting court proceedings for granting recognition and enforcement of a judicial decision in another Member State.⁸

Before analyzing the circumstances in *Avotiņš v. Latvia*,⁹ it is important to emphasize the presumption of equivalent protection developed by the ECHR in the *Bosphorus* case. According to this presumption, the state will not violate human rights when implementing the obligations arising from its membership in the international organization if that organization provides equal protection of those rights.¹⁰ In *Avotiņš v. Latvia*, the Court was for the first time examining the application of the right to a fair trial under Article 6/1 of the European Convention in the context of mutual recognition of judicial decisions. In one of the core paragraphs of the decision, the Court stated that if the courts of a certain state, which is party to the Convention and member of the European Union, apply the principle of mutual recognition, but before them a serious allegation is raised that the protection of a fundamental right has been manifestly deficient and that this can not be remedied by the EU law, they cannot avoid examining that complaint only on the basis that they are applying EU law.¹¹

2. MUTUAL TRUST AND THE PRINCIPLE OF MUTUAL RECOGNITION

A long time ago the EU recognized that it would be hard to apply the principle of mutual recognition of decisions (the principle which serves as the very basis of judicial cooperation between the Member States) without developing the principle of mutual trust. The latter has been for the first time presented in 1999 in Tampere, as one of the measures that should serve the intention of implemen-

⁶ Kramer, X. E., *Cross-border Enforcement in the EU: Mutual Trust versus Fair Trial? Towards Principles of European Civil Procedure*, International Journal of Procedural Law, Vol. 2, 2011, pp. 202-230, p. 218

⁷ See more in: Janssens, C., *The Principle of Mutual Recognition in EU Law*, Oxford University Press, Oxford, 2013

⁸ Beaumont, P., Johnston, E., *Can exequatur be abolished in Brussels I whilst retaining a public policy defence*, Journal of Private International Law, Vol. 6, No. 2, 2010, pp. 249 –279, p. 249

⁹ *Avotiņš v. Latvia*, Application no. 17502/07 of May 23, 2016

¹⁰ *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Application no. 45036/98, of June 30, 2005, par. 155

¹¹ *Avotiņš*, *op. cit.* note 9, par. 116

tation of the principle of mutual recognition.¹² The basis for future European procedural law was already launched with the Treaty establishing the European Economic Community.¹³ This Treaty provided the opportunity for the Member States to engage in negotiations on adoption of instruments that will ensure mutual recognition and enforcement of decisions (former art. 220.). With the Treaty of Amsterdam,¹⁴ signed in 1997, preconditions for creating the area of freedom, security, and justice as areas without internal frontiers have been achieved, which only confirmed that the European Union is no longer exclusively devoted to fulfilling the economic goal of the single market.¹⁵ With the entry into force of the Treaty of Lisbon, the principle of mutual recognition got its place in the Treaty. Today, it is explicitly mentioned in Articles 67, 70, 81, and 82 of the Treaty on the Functioning of the European Union (hereafter: TFEU).¹⁶ Therefore, the principle of mutual recognition today presents a constitutional principle that supports the area of freedom, security, and justice.¹⁷

Over the last few years in the European Union, a whole series of legal instruments that regulate the matter of procedural law in civil, commercial and family affairs as well as the matter of succession have been researched, blueprinted and adopted. Besides regulating the cross-border relations between the states of the European Union, the goal of these instruments is to protect the human rights in all kinds of cross-border relations between individuals and enterprises. Certainly, one of the most prominent such instruments is the Brussels Convention¹⁸ which later turned into the Brussels I Regulation,¹⁹ again later revised by Brussels I bis Regulation.²⁰

¹² Tampere European Council, 15.-16. X. 1999, Presidency Conclusions, [http://www.europarl.eu.int/summits/tam_en.html] Accessed January 31, 2018

¹³ Treaty establishing the European Economic Community, signed on March 25, 1957. in Rome and effective from 1 January 1958

¹⁴ Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October 1997, in force since May 1, 1999

¹⁵ Lenaerts, K., *The Principle of Mutual Recognition in the Area of Freedom, Security and Justice*, The Fourth Annual Sir Jeremy Lever Lecture, All Souls College, University Of Oxford, January 30, 2015 [https://www.law.ox.ac.uk/sites/files/oxlaw/the_principle_of_mutual_recognition_in_the_area_of_freedom_judge_lenaerts.pdf] Accessed January 31, 2018

¹⁶ Treaty on the Functioning of the European Union 2012/C 326/01, *OJ C 326*, 26.10.2012, p. 47–390

¹⁷ Herlin-Karnell, E., *Constitutional Principles in the EU Area of Freedom, Security and Justice*, in: Acosta, D., Murphy, C. (eds), *EU Security and Justice Law*, Hart Publishing, Oxford, 2014, p. 36

¹⁸ Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, 1968, Sl. I. L 299/32, 1972

¹⁹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal L 012, 16/01/2001 P. 0001 – 0023

²⁰ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *OJ L 351*, 20. 12. 2012, p. 1–32

Even though the representatives of the Member States have consistently tried to overcome the issue of national law heterogeneity,²¹ it soon became obvious that the Member States were not ready to give up on certain protective measures, primarily the notion of the grounds for refusal of enforcement.²² Neither the reference to the mutual trust did not convince the Member States to completely give up their control over decisions coming from the States of origin. Therefore, Brussels I bis Regulation abolished *exequatur* but continued to provide the reasons for refusal of recognition.²³ Of course, it is easy to explain this loosening to the demands of states by defending the right of the states to protect their fundamental values.²⁴

By its nature, the principle of mutual trust is based on the values that are common to the Member States of the EU. Those values are freedom, democracy, and respect

²¹ The Presidency Conclusions of the European Council on 10–11. December 2009 relating to the Stockholm Programme have the following general objective in para 28: “A Europe of law and justice: The achievement of a European area of justice must be consolidated to move beyond the current fragmentation. Priority should be given to mechanisms that facilitate access to justice, so that people can enforce their rights throughout the Union. Cooperation between public professionals and their training should also be improved, and resources should be mobilized to eliminate barriers to the recognition of legal decisions in other Member States”, [[http:// www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf)] Accessed 31 January 2018

²² Beaumont, *op. cit.* note 8, p. 250

²³ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Article 45.: 1. On the application of any interested party, the recognition of a judgment shall be refused: (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed; (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defense, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; (c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed; (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or (e) if the judgment conflicts with: (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or (ii) Section 6 of Chapter II. 2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction. 3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction. 4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4

²⁴ Storskrubb, E., *Mutual Trust and the Limits of Abolishing Exequatur in Civil Justice*, in: Gerard, D., Brouwer, E. (ed.), *Mapping Mutual Trust: Understanding the Framing the Role of Mutual Trust in EU Law*, EU Working Paper, MWP, 2016/14, p. 18

for human as well as the trust that each Member State protects fundamental rights equivalently but not necessarily in an identical way.²⁵

The Court of Justice of the European Union in the case of *Zarraga*²⁶ stated that the system for recognition and enforcement of judgments is based on the principle of mutual trust between the Member States given the fact that their national legal systems are capable of providing an equivalent level of protection of fundamental rights recognised at the European level, particularly those from the EU Charter of Fundamental Rights²⁷ (hereinafter: Charter of Fundamental Rights; Charter²⁸).

As a result, in the area of human rights protection, the law of the European Union takes for granted that the fundamental human rights (including the right to a fair trial) are always respected and taken into account by the courts of the Member States, and that is why the States, except in exceptional cases, need not check whether in particular case the other Member State respected the fundamental human rights guaranteed by EU law.²⁹

3. PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

The protection of fundamental human rights is regulated on several levels, in the European Union primarily in the Charter of Fundamental Rights and on a wider, better to say – Pan-European level, by the European Convention. The European Convention was drafted in 1950 by the Council of Europe, an international organization whose main tasks are strengthening democracy, human rights protection and the rule of law on the European continent. On the other hand, the Charter of Fundamental Rights was, until the entry into force of the Lisbon Treaty presented a non-binding document. Given the fact that it incorporates the provisions of the Convention, we may say that the Charter itself is based on the Convention. However, it is worthy to note that it also makes an upgrade of some rights.³⁰ Thus,

²⁵ Janssens, *op. cit.* note 7, p. 157

²⁶ CJEU in Case C-168/13. - *Jeremy F, C-491/10, Zarraga*, 30 May 2013

²⁷ *Ibid.*, par. 70

²⁸ Charter of Fundamental Rights of the European Union 2000/C 364/01

²⁹ More see: Kuipers, J. J., *The Right to a Fair Trial and the Free Movement of Civil Judgments*, Croatian Yearbook of European Law and Policy, Vol. 6, 2010, pp. 23-51

³⁰ In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection (Charter of Fundamental Rights of the European Union, Art. 52/3.)

the Charter sets the Convention as the lower limit, while the determination of the upper limit is left to the European Union itself, all to avoid different ECtHR and CJEU jurisprudence.³¹

The Human Rights Court in Strasbourg is not an institution of the European Union, but of the international organization - the Council of Europe. While its task is to decide on the violations of human rights and fundamental freedoms which the parties to the European Convention committed to the individuals,³² the task of the CJEU from Luxembourg (which is divided into two courts) is to rule on actions for annulment brought by individuals, companies and, in some cases, the governments (the General Court) as well as to deal with requests for preliminary rulings from national courts, certain actions for annulment and appeals (the Court of Justice).³³

3.1. CJEU - Opinion 2/13

The relationship between the ECHR and the Court of Justice was many times put forward, especially in the context of the relationship between the EU regulations and the protection of human rights under the Convention. There was an idea of the accession of the EU to the Convention. However, on December 18, 2014, the CJEU brought a negative Opinion on Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms³⁴ because such an Agreement could affect the specific characteristics and autonomy of Union law.³⁵ Also, the CJEU also considered problematical some protocols to the Convention including the Protocol no. 16,³⁶ signed on October 2, 2013. because it provides for the highest courts and tribunals of the contract-

³¹ Blackstoke, J., *The EU Charter of Fundamental Rights Scope and Competence*, [<https://eutopialaw.com/2012/04/17/the-eu-charter-of-fundamental-rights-scope-and-competence/>] Accessed 30 January 2018

³² European Court of Human Rights, official website, [<http://echr.coe.int/Pages/home.aspx?p=home>] Accessed 5 February 2018

³³ The Court of Justice of the European Union, [https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en] Accessed 5 February 2018

³⁴ Opinion 2/13 of the Court, 18 December 2014

³⁵ *Ibid.*, par. 194; for overview of the judgment see: Mohay, A., *Back to the Drawing Board? Opinion 2/13 of the Court of Justice on the Accession of the EU to the ECHR - Case Note*, Pécs Journal of International and European Law, 2015, pp. 28-36

³⁶ About Protocol 16 see more in: Knol Radoja, K., *Treba li nam Protokol broj 16 Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda?* in: Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća: zbornik radova s međunarodnog savjetovanja, (Rijavec, V., et. al.) Split, 19. i 20. studenog 2015, pp. 331. – 356

ing parties to be able to request the ECHR to give advisory opinions on issues concerning the interpretation or application of the rights and freedoms defined in the ECHR or the protocols to it. For the reason that, in a case of the EU accession to the ECHR, the ECHR would start to form an integral part of EU law, it was envisaged that the mechanism established by that protocol could affect the autonomy and effectiveness of the preliminary ruling procedure provided for in Article 267 TFEU.³⁷ The CJEU considered that it could not be ruled out that a request for an advisory opinion made under the Protocol no. 16 by the national courts could trigger the procedure for the prior involvement of the CJEU, thus creating a risk that the preliminary ruling procedure provided for in Article 267 TFEU might be circumvented.³⁸

Particularly critical of the accession is the paragraph no. 192 of the Opinion. In this paragraph the CJEU states that when implementing the EU law, the Member States may be required to assume that other Member States duly observe fundamental rights, so that not only may they not demand a higher level of protection of fundamental rights from another Member State than that provided by EU law, but, save in exceptional cases, they may not even check whether other Member State has actually observed the fundamental rights guaranteed by the EU.³⁹

However, from the jurisprudence of the ECHR it is clear that limiting the power of the State in which recognition is sought to review the observance of fundamental rights by the State of origin of the judgment could go against the requirement imposed by the Convention – that the court in the State addressed must be empowered to conduct a review of possible violations of fundamental rights in the State of origin, all in order to ensure that the protection of those rights is not manifestly deficient.⁴⁰

3.2. ECHR - the presumption of equivalent protection

According to the Convention and jurisprudence of the ECHR, all Contracting States are obliged to guarantee that human rights are duly protected. This applies to cross-border cases also. All courts must regard the Convention: the court of the state of origin in proceedings that end with a decision, and the court of the requested state when executing the decision of the foreign court. But then, this double control does not exist in the EU law. The principle of mutual trust

³⁷ Opinion 2/13, *op. cit.* note 34, par. 197

³⁸ *Ibid.*, par. 198

³⁹ *Ibid.*, par. 192

⁴⁰ *Avotiņš*, *op. cit.* note 9

provides that an initial control should be taken on only in the Member State of origin. Therefore, the question is whether and to what extent the requested State is obliged to ensure that the conventional fundamental rights and guarantees are respected. The answer to this question was given by the ECtHR in the case *Bosphorus*⁴¹ and later furtherly developed in the case *Michaud*.⁴²

In the *Bosphorus* judgment the Court found that the protection of fundamental rights within the scope of European Union law is, in principle, equivalent to the protection of the fundamental rights guaranteed by the Convention. Namely, the Court considers that the Convention must be interpreted in a way that will not prevent the contracting States to offer the protection of human rights to the level provided in the Convention.⁴³ In other words, if the international organization such as the EU protects human rights in an equal manner to the protection provided by the Convention, it is assumed that the state will not violate human rights when implementing the acts developed by the EU.⁴⁴ Nevertheless, in each particular case, it can be proven that the protection is inadequate and that the protection of the Convention's rights and freedoms was manifestly deficient. As said in *Matthews v. The United Kingdom*,⁴⁵ the Convention does not prohibit the transfer of some of the Member States' competences to an international organization such as the European Union, but the Convention rights must remain protected and the responsibility of the Member State continues to exist even after such a transfer.⁴⁶ Furthermore, in *Michaud* the ECHR emphasized that the findings from *Bosphorus* apply *a fortiori* from December 1, 2009, the date of entry into force of Art. 6. of the Treaty on European Union, which ensured that the fundamental rights have the status of the general principles within the EU law.⁴⁷

4. CASE AVOTIŅŠ V. LATVIA

The ECHR repeatedly expressed its willingness to support the judicial cooperation in civil matters, but with a warning that the creation of the area of freedom, security, and justice in Europe should not lead to violations of the rights guaranteed by the Convention. Restricting the rights of the requested Member State (the State from which the recognition or enforcement of a foreign judicial decision

⁴¹ *Bosphorus*, *op. cit.* note 10

⁴² *Michaud v. France*, Application no. 12323/11 of 6 December 2012

⁴³ *Bosphorus*, *op. cit.* note 10, par. 155

⁴⁴ *Ibid.*, par. 156

⁴⁵ *Matthews v. The United Kingdom*, Application no. 24833/94 of 18 February 1999

⁴⁶ *Matthews v. United Kingdom*, *Reports of Judgments and Decisions*, 1999-I, para. 32

⁴⁷ *Michaud*, *op. cit.* note 42, par. 106

is sought) to monitor compliance of the procedure in which the decision was brought with Conventional human rights could be contrary to the requirement under which the courts of the requested state must be able to ascertain that the protection of Conventional rights was not manifestly deficient.⁴⁸

In *Avotiņš v. Latvia* the ECHR has for the first time examined the application of the right to a fair trial in the proceedings of mutual recognition of judicial decisions under the EU law.

The circumstances of the case were next: the applicant and F.H. Ltd., a company incorporated under Cypriot law, signed an acknowledgment a deed to secure debt. In the contract, the applicant's Latvian address was mentioned.⁴⁹ In 2003. F.H. Ltd. brought proceedings against the applicant in the Limassol District Court (Cyprus), claiming that he had not repaid his debt.⁵⁰ The applicant claimed that he had not received a court call since the address in the contract was not his address. As the applicant did not appear, the Limassol District Court ruled in his absence acknowledging that the applicant had been regularly notified about the hearing.⁵¹ On February 22, 2005. F.H. Ltd. applied to the Riga City Latgale District Court claiming recognition and enforcement of that judgment.⁵²

In further proceedings, the applicant filed an appeal against the decision on recognition and enforcement of the Cypriot judgment delivered by the Latvian court of the first instance. In his appeal, the applicant insisted that the recognition and enforcement of the Cypriot court judgment in Latvia constitutes a violation of the Brussels I Regulation and the rules of the Latvian Civil Procedure Act.⁵³ The applicant claimed that he had not been duly informed of the proceedings before the Cypriot courts and that because of that it was impossible for him to prepare a statement of opposition and participate the proceedings.⁵⁴ The Regional Court quashed the challenged order and rejected the request for recognition and enforcement of the Cypriot judgment. The Cyprian enterprise later appealed that decision. The Supreme Court reversed the decision of the Regional Court and ordered the recognition and enforcement of the Cyprus judgment. The Supreme Court held that the applicant's argument that he was not properly informed of proceed-

⁴⁸ *Bosphorus, op. cit.* note 10, par. 156

⁴⁹ *Avotiņš, op. cit.* note 9, par. 14

⁵⁰ *Ibid.*, par. 15

⁵¹ *Ibid.*, par. 20

⁵² *Ibid.*, par. 21

⁵³ *Ibid.*, par. 29

⁵⁴ *Ibid.*, par. 30

ings before the Cypriot court was irrelevant since he did not file an appeal against the judgment in Cyprus.⁵⁵

The applicant has complained before the ECHR that the enforceability of the Cypriot judgment is illegal because the procedure violated his right to defense while the Latvian Supreme Court violated his right to a fair hearing.⁵⁶

The ECHR found that in this case, it is necessary first to ascertain whether the Supreme Court acted by the requirements of art. 6/1 of the Convention. Also, the Court emphasized that art. 19 of the Convention only determines whether the State Parties are acting in accordance with the obligations undertaken by the Convention and does not deal with the factual and legal issues in the disputed cases.⁵⁷ The Court also noticed that the recognition and enforcement of the Cypriot judgment was in line with Brussels I Regulation, which was applicable at the relevant time. Therefore, although the applicant claimed that the Supreme Court had breached the article 34(2) Brussels Regulation and the Latvian Civil Procedure Law, the Court repeated that its jurisdiction is limited to reviewing compliance with the requirements of the Convention and that it is not competent to rule on compliance with domestic law, international treaties or the EU law. The task of interpreting the EU law falls within the competence of the CJEU, primarily *via* the preliminary ruling proceedings, and secondly to the domestic courts when they adjudicate in their capacity of the courts of the EU.⁵⁸

However, it is particularly important to highlight that the ECHR has stated that the Contracting States when applying the EU law are bound by the obligations put on by the Convention. Those obligations must be estimated in accordance with the presumption set by the Court in the *Bosphorus* and in the *Michaud* judgments. The Court notes that the application of the presumption of equal protection depends on two conditions: the impossibility of discretionary action (margin of maneuver) of the domestic authorities and the use of the full potential of the supervisory mechanism envisaged by the EU law.⁵⁹

Regarding the first condition, the Court found that the contested provisions are contained in the Regulation, which is directly applicable, and not in the directive which leaves the choice of ways to achieve its goal. Therefore, contested provisions did not leave to the domestic courts any discretion in considering the request for

⁵⁵ *Ibid.*, par. 34

⁵⁶ *Ibid.*, par. 69

⁵⁷ *Ibid.*, par. 99

⁵⁸ *Ibid.*, par. 100

⁵⁹ *Ibid.*, par. 105

recognition and enforcement of foreign judicial decisions. Consequently, Latvian Supreme Court did not have any margin of maneuver in this case.⁶⁰ Regarding the second condition, the Court noted that in the *Bosphorus* case it has recognized that the supervisory mechanisms established within the EU provided a level of protection equivalent as that of the Convention.⁶¹

The Court has also mentioned that the Latvian Supreme Court acted in accordance with the obligations arising out from the Latvian membership in the European Union and concluded that the presumption of equal protection applies in this case.⁶² Regulation Brussels I is based on the principle of mutual recognition of judicial decisions which has its basis in the principle of mutual trust between the EU Member States. In addition, the provision of art. 34 (2) of the Regulation Brussels I explicitly provide that the defendant may invoke the above-mentioned reasons only if he has initially instituted proceedings to challenge the contested judicial decision. The Court held that the applicant, after learning of the judgment rendered in Cyprus, should have investigated the availability of remedies, but he did not do so.⁶³ This is a precondition which follows the aim of ensuring the proper administration of justice in a spirit of procedural economy and which is based on an approach like the rule of exhaustion of domestic remedies set forth in Art. 35/1 of the Convention. Hence, the Court didn't see any indication that the protection afforded was manifestly deficient in this regard and concluded that in this case there was no violation of Art. 6/1 of the Convention.⁶⁴

5. CONCLUSION

The EU law stands behind the principle of mutual trust expecting that all Member States should recognize a judgment given in another Member State shall without any special procedure being required and, except in exceptional circumstances, without examination of potential human rights violations.

On the other hand, the ECHR believes that Member States should retain an active role in the protection of fundamental rights, even when the EU legislation obliges domestic courts to automatically recognize and enforce a decision coming from another Member State.⁶⁵ The ECHR has thus indicated that there are clear limits

⁶⁰ *Ibid.*, par. 106

⁶¹ *Ibid.*, par. 109

⁶² *Ibid.*, par. 112

⁶³ *Ibid.*, par. 118

⁶⁴ *Ibid.*

⁶⁵ Gragl, P., *An Olive Branch from Strasbourg? Interpreting the European Court of Human Rights' Resurrection of Bosphorus and Reaction to Opinion 2/13 in the Avotiņš Case: ECtHR May 23, 2016, Case No.*

to the principle of mutual trust in human rights protection. What this means is that, although this kind of violation has not been determined in *Avotiņš v. Latvia*, the parties may be responsible for the violation of the Convention if there is an indication that an apparent violation of fundamental rights has occurred.⁶⁶As Gragl concludes, the ECHR's conclusions in *Avotiņš* case can be interpreted as extending an olive branch to Luxembourg, but he also justly suggests that the ECtHR might be ready to change its stance on *Bosphorus* or to undo this presumption in the future EU-related cases.⁶⁷

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