The contribution of international courts and tribunals to the development of procedural rules

OC - (ILA-14083) - THE BALANCE BETWEEN THE ECTHR´S BOSPHORUS PRESUMPTION AND EU PRINCIPLE OF MUTUAL TRUST

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Abstract

The judicial cooperation in civil matters is a policy of the European Union that seeks to approximate and establish means of cooperation between the judicial authorities of the different Member States. One of the main objectives of the judicial cooperation in civil matters is to facilitate access to justice and to allow the recognition and exercise of rights in the European Union. Among other measures listed one of the most important were the elimination of exequatur and simplification of the process of recognition of decisions and the extension of mutual recognition to issues considered to be decisive, such as succession and wills, and matrimonial property regimes.So, the principle of mutual recognition of decisions and the principle of mutual trust between Member States are at the bases of the system of automatic recognition adopted by the EU Regulations in judicial cooperation in civil matters. These principles also justify the guideline of the Court of Justice of the European Union (ECJ) that considers that the grounds for non-recognition or non-enforcement of judgments established in those regulations should have a strict interpretation.

There is a presumption of compliance with the European Convention of Human Rights when a Member State applies European Union law, since the protection of fundamental rights by the European Union is considered to be equivalent to the protection established in the European Convention of Human Rights: this is known as the presumption of equivalent protection or the *Bosphorus* presumption. In 18 June 2013, European Court of Human Rights (ECtHR) was called to decide the *Sofia Povse and Doris Povse v. Austria*, where the *Bosphorus* presumption was confronted with the principle of mutual trust and automatic recognition of decisions resulting from Brussels II *bis* Regulation, which is one of the main instruments of the EU policy of judicial cooperation in civil matters. Later, in 23 May 2016, the Grand Chamber of the ECtHR delivered its judgment in the case of *Avotiņš v. Latvia*, where again the *Bosphorus* presumption was confronted with the automatic recognition of decisions system resulting of the Brussels I Regulation. The objective of this study is to analyze the decision of the ECtHR and the future influence of the European Convention of Human Rights (ECHR) over the principle of mutual trust, namely the compatibility of the system of mutual recognition of decisions established under EU law (among others, in Regulation Brussels II *bis* and Regulation Brussels I Recast) with the European Convention of Human Rights and,consequently, the contribution of the case laws of international courts to de development of procedure laws.

Palavras-chave : Bosphorus presumption, principle of mutual trust, European Court of Human Rights