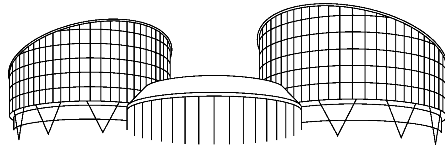

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF AVOTIŅŠ v. LATVIA

(Application no. 17502/07)

JUDGMENT

STRASBOURG

23 May 2016

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Avotiņš v. Latvia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

András Sajó, *President,*
Işıl Karakaş,
Josep Casadevall,
Elisabeth Steiner,
Ján Šikuta,
Nona Tsotsoria,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Aleš Pejchal,
Faris Vehabović,
Ksenija Turković,
Egidijus Kūris,
Robert Spano,
Iulia Antoanella Motoc,
Jon Fridrik Kjølbro, *judges,*
Jautrīte Briede, ad hoc *judge*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 8 April 2015 and on 23 March 2016,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 17502/07) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) against the Republic of Cyprus and the Republic of Latvia by a Latvian national, Mr Pēteris Avotiņš (“the applicant”), on 20 February 2007.

2. The applicant was initially represented by Mr J. Eglītis, a lawyer practising in Riga. In the Grand Chamber proceedings he was represented by Mr L. Liepa, a lawyer also practising in Riga. The Latvian Government (“the respondent Government”) were represented by their former Agent, Ms I. Reine, and subsequently by their current Agent, Ms K. Līce.

3. The application was originally lodged against Cyprus and Latvia. The applicant alleged, in particular, that a Cypriot court had ordered him to pay a contractual debt without duly summoning him to appear or securing the exercise of his defence rights. He further complained of the fact that the Latvian courts had ordered the enforcement of the Cypriot court judgment

in Latvia. He alleged a violation of his right to a fair hearing guaranteed by Article 6 § 1 of the Convention.

4. The application was initially assigned to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). In a partial decision of 30 March 2010 a Chamber of that Section declared the application inadmissible as being out of time in so far as it concerned Cyprus (for failure to comply with the six-month time-limit laid down in Article 35 § 1 of the Convention). With regard to the complaints against Latvia, the Chamber further decided to give notice to the Latvian Government of the complaint under Article 6 § 1 of the Convention and to declare the remainder of the application inadmissible.

5. On 1 February 2011 the composition of the Court's Sections was changed and the application was assigned to the Fourth Section (Rules 25 § 1 and 52 § 1).

6. On 25 February 2014 a Chamber of that Section composed of Päivi Hirvelä, President, Ineta Ziemele, George Nicolaou, Ledi Bianku, Zdravka Kalaydjieva, Vincent A. De Gaetano and Krzysztof Wojtyczek, judges, and Françoise Elens-Passos, Section Registrar, delivered a judgment in which it found by a majority that there had been no violation of Article 6 § 1 of the Convention. The joint dissenting opinion of Judges Ziemele, Bianku and De Gaetano was annexed to the judgment.

7. On 23 May 2014 the applicant requested the referral of the case to the Grand Chamber under Article 43 of the Convention and Rule 73. On 8 September 2014 the panel of the Grand Chamber granted the request.

8. The composition of the Grand Chamber was subsequently determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. As the seat of the judge elected in respect of Latvia had become vacant in the meantime owing to the departure of Judge Ineta Ziemele, the President of the Court appointed Ms Jautrīte Briede to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

9. The respondent Government filed written observations on the merits, while the applicant referred to the arguments submitted in his request for referral to the Grand Chamber. Observations were also received from the Estonian Government, the European Commission and the Centre for Advice on Individual Rights in Europe (the AIRE Centre), all of which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3). The European Commission was also given leave to participate in the hearing.

10. Furthermore, in the interests of the proper administration of justice, the President of the Court decided to invite the Cypriot Government to intervene in the case and to submit explanations and observations on Cypriot law as relevant to the case (Article 36 § 2 of the Convention and Rule 44 § 3). The Cypriot Government accepted the invitation and submitted their observations on 4 February 2015.

11. A hearing was held in public in the Human Rights Building, Strasbourg, on 8 April 2015 (Rule 59 § 3).

There appeared before the Court:

(a) *for the applicant*
Mr L. LIEPA, *Counsel,*
Mr M. ŠĶIŅĶIS,
Mr M. PĒTERSONS, *Advisers,*
Mr P. AVOTIŅŠ, *Applicant;*

(b) *for the respondent Government*
Ms K. LĪCE, *Agent,*
Ms S. KAULIŅA, *Counsel,*
Ms A. ZIKMANE,
Ms D. PALČEVSKA, *Advisers;*

(c) *for the European Commission*
Mr H. KRÄMER, *Counsel.*

The Court heard addresses by Mr Liepa, Ms Līce and Mr Krämer and their replies to questions asked by the judges.

12. Judges Elisabeth Steiner, Nona Tsotsoria and Paul Lemmens, substitute judges, subsequently replaced President Dean Spielmann and Judges Mark Villiger and Isabelle Berro, who had left the Court owing to the expiry of their terms of office and were unable to take part in the further consideration of the case (Rule 24 §§ 3 and 4 of the Rules of Court). Judge András Sajó, Vice-President of the Court, then took over the presidency of the Grand Chamber in the present case (Rule 10).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

13. The applicant was born in 1954 and lives in Garkalne (Riga district). At the time of the events which are the subject of the present application he was an investment consultant.

A. The proceedings in the Limassol District Court

14. On 4 May 1999 the applicant and F.H. Ltd., a commercial company incorporated under Cypriot law, signed an acknowledgment of debt deed before a notary. Under the terms of the deed the applicant declared that he

had borrowed 100,000 United States dollars (USD) from F.H. Ltd. and undertook to repay that sum with interest by 30 June 1999. The deed also contained choice of law and jurisdiction clauses according to which it was governed "in all respects" by Cypriot law and the Cypriot courts had non-exclusive jurisdiction to hear any disputes arising out of it. The applicant's address was given as G. Street in Riga and was indicated as follows:

> "[FOR] GOOD AND VALUABLE CONSIDERATION, I, PĒTERIS AVOTIŅŠ, of [no.], G. [street], 3rd floor, Riga, Latvia, [postcode] LV-..., ('the Borrower') ..."

15. In 2003 F.H. Ltd. brought proceedings against the applicant in the Limassol District Court (*Επαρχιακό Δικαστήριο Λεμεσού,* Cyprus), alleging that he had not repaid the above-mentioned debt and requesting that he be ordered to pay the principal debt together with interest. In the Strasbourg proceedings the applicant submitted that he had in fact already repaid the debt before the proceedings were instituted in the Cypriot court, not by paying the sum of money in question to F.H. Ltd. but by other means linked to the capital of F.H. Ltd.'s parent company. However, he acknowledged that there was no documentary evidence of this. The respondent Government contested the applicant's submission.

16. In an order dated 27 June 2003 the District Court authorised the "sealing and filing of the writ of summons". On 24 July 2003 a "specially endorsed writ" was drawn up, describing the facts of the case in detail. It gave the applicant's address as G. Street in Riga, the address indicated on the acknowledgment of debt deed.

17. Since the applicant was not resident in Cyprus, F.H. Ltd. made an *ex parte* application to the same District Court on 11 September 2003 seeking a fresh order enabling a summons to be served on the applicant outside the country and requiring him to appear within thirty days from the date of issuing of the summons. The claimant company's lawyer produced an affidavit declaring that the defendant was habitually resident at an address in G. Street in Riga and could actually receive judicial documents at that address. The applicant, for his part, contended that it would have been physically impossible for him to receive the summons at the address in question, which was simply the address at which he had signed the loan contract and the acknowledgment of debt deed in 1999 and was not his home or business premises.

18. On 7 October 2003 the Limassol District Court ordered that notice of the proceedings be served on the applicant at the address provided by the claimant company. The applicant was summoned to appear or to come forward within thirty days of receiving the summons. If he did not do so the court would make no further attempt to contact him and would instead post all future announcements concerning the case on the court noticeboard.

19. An affidavit produced by an employee of the firm of lawyers representing F.H. Ltd. showed that, in accordance with the court order, the

summons had been sent by recorded delivery to the address in G. Street in Riga on 16 November 2003. However, the copy of the summons furnished by the Latvian Government indicated that it had been drawn up on 17 November 2003. The slip produced by the Cypriot postal service stated that the summons had been sent on 18 November 2003 to the address in G. Street, and had been delivered and signed for on 27 November 2003. However, the signature on the slip did not appear to correspond to the applicant's name. The applicant claimed never to have received the summons.

20. As the applicant did not appear, the Limassol District Court ruled in his absence on 24 May 2004. It ordered him to pay the claimant USD 100,000 or the equivalent in Cypriot pounds (CYP), plus interest at an annual rate of 10% of the aforementioned amount from 30 June 1999 until payment of the debt. The applicant was also ordered to pay costs and expenses in a gross amount of CYP 699.50, plus interest at an annual rate of 8%. According to the judgment, the final version of which was drawn up on 3 June 2004, the applicant had been duly informed of the hearing but had not attended. The judgment did not state whether the decision was final or indicate possible judicial remedies.

B. The recognition and enforcement proceedings in the Latvian courts

21. On 22 February 2005 F.H. Ltd. applied to the Riga City Latgale District Court (*Rīgas pilsētas Latgales priekšpilsētas tiesa*, Latvia) seeking recognition and enforcement of the judgment of 24 May 2004. In its request the company also sought to have a temporary precautionary measure applied. It stated that the applicant was the owner of real property in Garkalne (Riga district) which according to the land register was already mortgaged to a bank. Accordingly, fearing that the applicant might seek to evade enforcement of the judgment, it asked the District Court to place a charge on the property in question and record the charge in the land register. Lastly, it requested that the applicant be ordered to pay the costs. In its request the company gave as the applicant's place of residence an address in Č. Street in Riga which differed from the address previously notified to the Cypriot court.

22. On 28 April 2005 the Latgale District Court adjourned examination of F.H. Ltd.'s request, informing the company that the request contained a number of defects which it had one month to correct. In particular, F.H. Ltd. had not explained why it had given an address in Č. Street when the applicant was supposedly resident in G. Street.

23. On 26 May 2005 F.H. Ltd. submitted a corrigendum in which it explained, among other points, that according to the information contained in the register of residents (*Iedzīvotāju reģistrs*), the address in Č. Street was

the applicant's officially declared home address. As to the address in G. Street, the company's representatives had assumed it to be the applicant's actual residence. In that connection the Latvian Government provided the Court with a copy of a letter from the authority responsible for the register of residents according to which, prior to 19 June 2006, the applicant's officially declared address had been in Č Street.

24. In an order of 31 May 2005 the Latgale District Court ruled that the corrigendum submitted by F.H. Ltd. was insufficient to remedy all the defects in its request. The court therefore declined to examine the request and sent it back to the company. The latter lodged an appeal with the Riga Regional Court (*Rīgas apgabaltiesa*), which on 23 January 2006 set aside the order of 31 May 2005 and remitted the case to the District Court in order for the latter to examine the request for recognition and enforcement as rectified by the corrigendum of 26 May 2005.

25. In an order of 27 February 2006 issued without the parties being present, the Latgale District Court granted F.H. Ltd.'s request in full. It ordered the recognition and enforcement of the Limassol District Court's judgment of 24 May 2004 and the entry in the Garkalne municipal land register of a charge on the property owned by the applicant in that municipality. The applicant was also ordered to pay the costs.

26. According to the applicant, it was not until 15 June 2006 that he learned, from the bailiff responsible for enforcement of the Cypriot judgment, of the existence of that judgment and of the Latgale District Court order for its enforcement. On the following day (16 June 2006) he went to the District Court, where he acquainted himself with the judgment and the order. The respondent Government did not dispute these facts.

27. The applicant did not attempt to appeal against the Cypriot judgment in the Cypriot courts. However, he lodged an interlocutory appeal (*blakus sūdzība*) against the order of 27 February 2006 with the Riga Regional Court, while asking the Latgale District Court to extend the time allowed for lodging the appeal. Arguing that there was nothing in the case file to confirm that he had been given notice of the hearing of 27 February 2006 or of the order issued following the hearing, he submitted that the thirty-day period laid down by the Civil Procedure Law should start running on 16 June 2006, the date on which he had taken cognisance of the order in question.

28. In an order of 13 July 2006 the Latgale District Court granted the applicant's request and extended the time-limit for lodging an appeal. It noted, *inter alia*, as follows:

> "... It is clear from the order of 27 February 2006 that the issue of recognition and enforcement of the foreign judgment was determined in the absence of the parties, on the basis of the documents furnished by the claimant, [F.H. Ltd.]. The order further states that the defendant may appeal against it within thirty days from the date of receipt of the copy [of that order], in accordance with section 641(2) of the Civil Procedure Law.

The court considers the arguments advanced by the applicant, P. Avotiņš, to be well-founded, to the effect that he did not receive the order ... of 27 February 2006 until 16 June 2006, this being attested to by the reference in the list of consultations [appended to the case file] and by the fact that the order, served [on the applicant] by the court, was returned on 10 April 2006 ... It is apparent from the documents appended to the appeal that the applicant has not lived at the declared address in [Č.] Street since 1 May 2004; this confirms ... the statement made by his representative at the hearing, according to which the applicant no longer lives at the above-mentioned address.

Accordingly, the thirty-day period should ... run from the date on which the applicant received the order in question ...

Further, the court does not share the view of the representative of [F.H. Ltd.] that the applicant himself is responsible for his failure to receive the correspondence because he did not declare his change of address promptly, and that the time allowed [for lodging an appeal] should not therefore be extended. The fact that the applicant did not take the necessary legal steps concerning registration of residence is not sufficient to justify a refusal by the court to allow him to exercise the fundamental rights guaranteed by the State as regards access to the courts and judicial protection, including the right to appeal against a decision, with the consequences this is likely to entail. ...”

29. In his grounds of appeal before the Riga Regional Court the applicant contended that the recognition and enforcement of the Cypriot judgment in Latvia breached Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the Brussels I Regulation”) and several provisions of the Latvian Civil Procedure Law. He submitted two arguments in that regard.

30. Firstly, the applicant argued that in accordance with Article 34(2) of the Brussels I Regulation (corresponding in substance to section 637(2), third sub-paragraph, of the Latvian Civil Procedure Law), a judgment given in default in another Member State could not be recognised if the defendant had not been served with the document instituting the proceedings in sufficient time and in such a way as to enable him to arrange for his defence. He maintained that he had not been duly informed of the proceedings in Cyprus, although both the Cypriot lawyers who had represented the claimant company in the Limassol District Court and the Latvian lawyers who had represented it in the Latvian courts had been perfectly aware of his business address in Riga. In support of that allegation he submitted that he had had professional dealings with the Cypriot lawyers, who had telephoned him and sent faxes to his office, and had met the Latvian lawyers in person. Hence, they must all have been aware of his business address. He added that he could also have been reached at his home address in Garkalne, as he had a residence there that was officially declared in accordance with the law and the lawyers could have consulted the municipal land register, where the property he owned was registered under his name. However, instead of serving notice of the proceedings on him at one of those addresses, which had been known and accessible, the

lawyers had given the courts an address which they should have realised could not be used.

31. Secondly, the applicant argued that, under the terms of Article 38(1) of the Brussels I Regulation and section 637(2), second sub-paragraph, of the Civil Procedure Law, a judgment had to be enforceable in the State of origin in order to be enforceable in the Member State addressed. In the instant case, there had been a threefold breach of those requirements. First, the claimant had only submitted the text of the Cypriot court judgment to the Latvian court and not the certificate required by Annex V to the Brussels I Regulation. In that connection the applicant acknowledged that under Article 55(1) of the Brussels I Regulation the court in which enforcement was sought could, in some circumstances, exempt the claimant from the obligation to produce a certificate. However, in the present case the Latgale District Court had not made clear whether it considered that the claimant could be exempted from that obligation and, if so, for what reason. Second, the Cypriot judgment had contained no reference to the fact that it was enforceable or to possible judicial remedies. Third, although a judgment had to be enforceable in the country of origin in order to be enforced in accordance with the Brussels I Regulation, the claimant company had not produced any documentary evidence demonstrating that the judgment of 24 May 2004 was enforceable in Cyprus. In view of all these circumstances, the applicant contended that the judgment could on no account be recognised and enforced in Latvia.

32. In a judgment of 2 October 2006 the Regional Court allowed the applicant's appeal on the merits, quashed the impugned order and rejected the request for recognition and enforcement of the Cypriot judgment.

33. F.H. Ltd. lodged an appeal against that judgment with the Senate of the Supreme Court, which examined it on 31 January 2007. At the start of the hearing F.H. Ltd. submitted copies of several documents to the Senate, including the certificate referred to in Article 54 of the Brussels I Regulation and Annex V thereto. The certificate was dated 18 January 2007 and had been signed by an acting judge of the Limassol District Court. It stated that the document instituting the proceedings had been served on the applicant on 27 November 2003. The last part of the certificate, intended for the name of the person against whom the judgment was enforceable, had been left blank. When asked to comment on these documents the applicant's lawyer contended that they were clearly insufficient to render the judgment enforceable.

34. In a final judgment of 31 January 2007 the Supreme Court quashed and annulled the Regional Court judgment of 2 October 2006. It granted F.H. Ltd.'s request and ordered the recognition and enforcement of the Cypriot judgment and the entry in the land register of a charge on the applicant's property in Garkalne. The relevant extracts from the judgment read as follows:

" ... It is clear from the evidence in the case file that the Limassol District Court judgment became final. This is confirmed by the explanations provided by both parties at the Regional Court hearing on 2 October 2006, according to which no appeal had been lodged against the judgment, and by the certificate issued on 18 January 2007... As [the applicant] did not appeal against the judgment, his lawyer's submissions to the effect that he was not duly notified of the examination of the case by a foreign court lack relevance [*nav būtiskas nozīmes*].

Having regard to the foregoing, the Senate finds that the judgment of the Limassol District Court (Cyprus) of 24 May 2004 must be recognised and enforced in Latvia.

Article 36 of the [Brussels I] Regulation provides that a foreign judgment may under no circumstances be reviewed as to its substance; in accordance with section 644(1) of the Civil Procedure Law, once such judgments have been recognised they are to be enforced in accordance with the conditions laid down by that Law. ..."

35. On 14 February 2007 the Latgale District Court, basing its decision on the Supreme Court judgment, issued a payment order (*izpildu raksts*). The applicant complied immediately with the terms of the order and paid the bailiff employed by the claimant company a total of 90,244.62 Latvian lati (LVL, approximately 129,000 euros (EUR)), comprising LVL 84,366.04 for the principal debt and LVL 5,878.58 in enforcement costs. He then requested that the charge on his property in Garkalne be lifted. In two orders dated 24 January 2008 the judge with responsibility for land registers (*Zemesgrāmatu nodaļas tiesnesis*) refused the request. The applicant lodged an appeal on points of law with the Senate of the Supreme Court, which, in an order of 14 May 2008, lifted the charge on his property.

II. RELEVANT EUROPEAN UNION AND INTERNATIONAL LAW MATERIALS

A. General European Union law

1. Fundamental rights in European Union law

36. At the material time the relevant parts of Article 6 of the Treaty on European Union (TEU) read as follows:

"1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

..."

37. Following the entry into force of the Treaty of Lisbon on 1 December 2009, Article 6 of the TEU reads as follows:

> “1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.
>
> The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.
>
> The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.
>
> 2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties.
>
> 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”

38. Furthermore, since 1 December 2009 the relevant provisions of the Treaty on the Functioning of the European Union (TFEU) provide:

Article 67

> “1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
>
> ...
>
> 4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.”

Article 81(1)

> “The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.”

Article 82(1)

> “Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.”

39. Lastly, the second paragraph of Article 249 of the Treaty establishing the European Community (applicable at the material time and identical to Article 288, second paragraph, of the TFEU) provided:

> "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."

40. The relevant provisions of the Charter of Fundamental Rights of the European Union (which had not yet acquired binding force at the material time) provide:

Article 47 – Right to an effective remedy and to a fair trial

> "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
>
> ..."

Article 51 – Field of application

> "1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law...
>
> ..."

Article 52 – Scope and interpretation of rights and principles

> "1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
>
> ...
>
> 3. 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.
>
> 4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
>
> ..."

Article 53 – Level of protection

"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."

41. In the case of *Krombach v Bamberski* (Case C-7/98, judgment of 28 March 2000, ECR I-1935), the Court of Justice of the European Union (known as the "Court of Justice of the European Communities" prior to the entry into force of the Treaty of Lisbon on 1 December 2009 – hereinafter "the CJEU"), held as follows:

"25. The Court has consistently held that fundamental rights form an integral part of the general principles of law whose observance the Court ensures (see, in particular, Opinion 2/94 [1996] ECR I-1759, paragraph 33). For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. In that regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the ECHR') has particular significance (see, *inter alia*, Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 18).

26. The Court has thus expressly recognised the general principle of Community law that everyone is entitled to fair legal process, which is inspired by those fundamental rights (Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraphs 20 and 21, and judgment of 11 January 2000 in Joined Cases C-174/98 P and C-189/98 P *Netherlands and Van der Wal* v *Commission* [2000] ECR I-0000, paragraph 17).

27. Article F(2) of the Treaty on European Union (now, after amendment, Article 6(2) EU) embodies that case-law. It provides: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law'."

42. In its judgment in *ASML Netherlands BV v Semiconductor Industry Services GmbH (SEMIS)* (Case C-283/05, judgment of 14 December 2006, ECR I-12041), the CJEU reiterated the following:

"26. According to settled case-law, fundamental rights form an integral part of the general principles of law whose observance the Court ensures... For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories. In that regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') has special significance...

27. It follows from the ECHR, as interpreted by the European Court of Human Rights, that the rights of the defence, which derive from the right to a fair legal process enshrined in Article 6 of that convention, require specific protection intended to guarantee effective exercise of the defendant's rights (see Eur. Court H.R., *Artico*

> v *Italy* judgment of 13 May 1980, Series A No 37, § 33, and Eur. Court H.R., *T* v *Italy* judgment of 12 October 1992, Series A No 245 C, § 28).”

43. In its judgment in *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v Bundesrepublik Deutschland* (Case C-279/09, judgment of 22 December 2010, ECR I-13849), delivered after the entry into force of the Treaty of Lisbon and hence after the Charter of Fundamental Rights had acquired the same legal value as the Treaties, the CJEU held:

> “29. The question referred thus concerns the right of a legal person to effective access to justice and, accordingly, in the context of EU law, it concerns the principle of effective judicial protection. That principle is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the ECHR’) ...
>
> 30. As regards fundamental rights, it is important, since the entry into force of the Lisbon Treaty, to take account of the Charter, which has ‘the same legal value as the Treaties’ pursuant to the first subparagraph of Article 6(1) TEU. Article 51(1) of the Charter states that the provisions thereof are addressed to the Member States when they are implementing EU law.
>
> 31. In that connection, the first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article. Under the second paragraph of Article 47, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone is to have the possibility of being advised, defended and represented. The third paragraph of Article 47 of the Charter provides specifically that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
>
> 32. According to the explanations relating to that article, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the interpretation of the Charter, the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the ECHR.”

44. In *Gascogne Sack Deutschland GmbH v Commission* (Case C-40/12 P, judgment of 26 November 2013), the CJEU stressed the continuity of the legal system before and after the entry into force of the Treaty of Lisbon, finding as follows:

> “28. As to the question of whether the entry into force of the Lisbon Treaty ought to have been regarded, as the appellant submits, as a matter which came to light in the course of the proceedings and, on that basis, gave good grounds, in accordance with the first subparagraph of Article 48(2) of the Rules of Procedure of the General Court, for introducing new pleas in law, the Court of Justice has held that the entry into force of that treaty, incorporating the Charter into European Union primary law, cannot be considered a new matter of law within the meaning of the first subparagraph of Article 42(2) of its Rules of Procedure. In that context, the Court has noted that, even before that treaty entered into force, it had found on several occasions that the right to a fair trial, which derives inter alia from Article 6 ECHR, constitutes a fundamental right

which the European Union respects as a general principle under Article 6(2) EU (see, in particular, Case C-289/11 P *Legris Industries v Commission*, paragraph 36).”

45. Lastly, with regard to the scope of the rights guaranteed by the Charter of Fundamental Rights, the CJEU held in *J. McB. v L.E.* (Case C-400/10 PPU, judgment of 5 October 2010):

> “53. Moreover, it follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR. However, that provision does not preclude the grant of wider protection by European Union law. Under Article 7 of the Charter, ‘[e]veryone has the right to respect for his or her private and family life, home and communications’. The wording of Article 8(1) of the ECHR is identical to that of the said Article 7, except that it uses the expression ‘correspondence’ instead of ‘communications’. That being so, it is clear that the said Article 7 contains rights corresponding to those guaranteed by Article 8(1) of the ECHR. Article 7 of the Charter must therefore be given the same meaning and the same scope as Article 8(1) of the ECHR, as interpreted by the case-law of the European Court of Human Rights (see, by analogy, Case C-450/06 *Varec* [2008] ECR I-581, paragraph 48).”

2. Fundamental rights and the principle of mutual trust

46. In its judgment in *N.S. v Secretary of State for the Home Department* (Joined Cases C-411/10 and C-493/10, judgment of 21 December 2011, ECR I-13905), given in the context of the application of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (“the Dublin Regulation”), the CJEU held:

> “77. According to settled case-law, the Member States must not only interpret their national law in a manner consistent with European Union law but also make sure they do not rely on an interpretation of an instrument of secondary legislation which would be in conflict with the fundamental rights protected by the European Union legal order or with the other general principles of European Union law (see, to that effect, Case C-101/01 *Lindqvist* [2003] ECR I-12971, paragraph 87, and Case C-305/05 *Ordre des barreaux francophones et germanophone and Others* [2007] ECR I-5305, paragraph 28).
>
> 78. Consideration of the texts which constitute the Common European Asylum System shows that it was conceived in a context making it possible to assume that all the participating States, whether Member States or third States, observe fundamental rights, including the rights based on the Geneva Convention and the 1967 Protocol, and on the ECHR, and that the Member States can have confidence in each other in that regard.
>
> ...
>
> 80. In those circumstances, it must be assumed that the treatment of asylum seekers in all Member States complies with the requirements of the Charter, the Geneva Convention and the ECHR.
>
> 81. It is not however inconceivable that that system may, in practice, experience major operational problems in a given Member State, meaning that there is a

substantial risk that asylum seekers may, when transferred to that Member State, be treated in a manner incompatible with their fundamental rights.

...

83. At issue here is the raison d'être of the European Union and the creation of an area of freedom, security and justice and, in particular, the Common European Asylum System, based on mutual confidence and a presumption of compliance, by other Member States, with European Union law and, in particular, fundamental rights.

...

94. It follows from the foregoing that in situations such as that at issue in the cases in the main proceedings, to ensure compliance by the European Union and its Member States with their obligations concerning the protection of the fundamental rights of asylum seekers, the Member States, including the national courts, may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.

...

98. The Member State in which the asylum seeker is present must, however, ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, that Member State must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.

99. It follows from all of the foregoing considerations that, as stated by the Advocate General in paragraph 131 of her Opinion, an application of Regulation No 343/2003 on the basis of the conclusive presumption that the asylum seeker's fundamental rights will be observed in the Member State primarily responsible for his application is incompatible with the duty of the Member States to interpret and apply Regulation No 343/2003 in a manner consistent with fundamental rights.

100. In addition, as stated by N.S., were Regulation No 343/2003 to require a conclusive presumption of compliance with fundamental rights, it could itself be regarded as undermining the safeguards which are intended to ensure compliance with fundamental rights by the European Union and its Member States.

101. That would be the case, inter alia, with regard to a provision which laid down that certain States are 'safe countries' with regard to compliance with fundamental rights, if that provision had to be interpreted as constituting a conclusive presumption, not admitting of any evidence to the contrary.

...

104. In those circumstances, the presumption underlying the relevant legislation, stated in paragraph 80 above, that asylum seekers will be treated in a way which complies with fundamental rights, must be regarded as rebuttable.

105. In the light of those factors, the answer to the questions referred is that European Union law precludes the application of a conclusive presumption that the Member State which Article 3(1) of Regulation No 343/2003 indicates as responsible observes the fundamental rights of the European Union."

47. In the case of *Melloni v Ministerio Fiscal* (Case C-399/11, judgment of 26 February 2013), concerning in particular the issue whether a European Union Member State could refuse to execute a European arrest warrant on the basis of Article 53 of the Charter of Fundamental Rights on grounds of infringement of the fundamental rights of the person concerned guaranteed by the national Constitution, the CJEU found as follows:

> “60. It is true that Article 53 of the Charter confirms that, where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of EU law are not thereby compromised.
>
> 61. However, [the] Framework Decision [governing the European arrest warrant] does not allow Member States to refuse to execute a European arrest warrant when the person concerned is in one of the situations provided for ...
>
> 62. It should also be borne in mind that the adoption of Framework Decision 2009/299, which inserted that provision into Framework Decision 2002/584, is intended to remedy the difficulties associated with the mutual recognition of decisions rendered in the absence of the person concerned at his trial arising from the differences as among the Member States in the protection of fundamental rights. That framework decision effects a harmonisation of the conditions of execution of a European arrest warrant in the event of a conviction rendered *in absentia*, which reflects the consensus reached by all the Member States regarding the scope to be given under EU law to the procedural rights enjoyed by persons convicted *in absentia* who are the subject of a European arrest warrant.
>
> 63. Consequently, allowing a Member State to avail itself of Article 53 of the Charter to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, a possibility not provided for under [the] Framework Decision ..., in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by the constitution of the executing Member State, by casting doubt on the uniformity of the standard of protection of fundamental rights as defined in that framework decision, would undermine the principles of mutual trust and recognition which that decision purports to uphold and would, therefore, compromise the efficacy of that framework decision.
>
> 64. In the light of the foregoing considerations, the answer to the third question is that Article 53 of the Charter must be interpreted as not allowing a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the issuing Member State, in order to avoid an adverse effect on the right to a fair trial and the rights of the defence guaranteed by its constitution.”

48. In the case of *Alpha Bank Cyprus Ltd v Dau Si Senh and Others* (Case C-519/13, judgment of 16 September 2015), concerning the application of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, the CJEU held:

> “30. Therefore, with the aim of improving the efficiency and speed of judicial procedures and ensuring proper administration of justice, that regulation establishes the principle of direct transmission of judicial and extrajudicial documents between the Member States (see judgment in *Leffler*, C-443/03, EU:C:2005:665, paragraph 3),

which has the effect of simplifying and accelerating the procedures. Those objectives are noted in recitals 6 to 8 in the preamble to that regulation.

31. However, as the Court has already held on numerous occasions, those objectives cannot be attained by undermining in any way the rights of the defence of the addressees, which derive from the right to a fair hearing, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (see, inter alia, judgment in *Alder*, C-325/11, EU:C:2012:824, paragraph 35 and the case-law cited).”

3. *Opinion 2/13*

49. In Opinion 2/13 of 18 December 2014 on the draft agreement providing for the accession of the European Union to the European Convention on Human Rights, the CJEU found that the draft agreement was not compatible with the Treaty on European Union. The relevant parts of the Opinion provide:

“187. In that regard, it must be borne in mind, in the first place, that Article 53 of the Charter provides that nothing therein is to be interpreted as restricting or adversely affecting fundamental rights as recognised, in their respective fields of application, by EU law and international law and by international agreements to which the EU or all the Member States are party, including the ECHR, and by the Member States’ constitutions.

188. The Court of Justice has interpreted that provision as meaning that the application of national standards of protection of fundamental rights must not compromise the level of protection provided for by the Charter or the primacy, unity and effectiveness of EU law (judgment in *Melloni*, EU:C:2013:107, paragraph 60).

189. In so far as Article 53 of the ECHR essentially reserves the power of the Contracting Parties to lay down higher standards of protection of fundamental rights than those guaranteed by the ECHR, that provision should be coordinated with Article 53 of the Charter, as interpreted by the Court of Justice, so that the power granted to Member States by Article 53 of the ECHR is limited – with respect to the rights recognised by the Charter that correspond to those guaranteed by the ECHR – to that which is necessary to ensure that the level of protection provided for by the Charter and the primacy, unity and effectiveness of EU law are not compromised.

...

191. In the second place, it should be noted that the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, judgments in *N. S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 78 to 80, and *Melloni*, EU:C:2013:107, paragraphs 37 and 63).

192. Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but,

save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU.

193. The approach adopted in the agreement envisaged, which is to treat the EU as a State and to give it a role identical in every respect to that of any other Contracting Party, specifically disregards the intrinsic nature of the EU and, in particular, fails to take into consideration the fact that the Member States have, by reason of their membership of the EU, accepted that relations between them as regards the matters covered by the transfer of powers from the Member States to the EU are governed by EU law to the exclusion, if EU law so requires, of any other law.

194. In so far as the ECHR would, in requiring the EU and the Member States to be considered Contracting Parties not only in their relations with Contracting Parties which are not Member States of the EU but also in their relations with each other, including where such relations are governed by EU law, require a Member State to check that another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between those Member States, accession is liable to upset the underlying balance of the EU and undermine the autonomy of EU law."

4. Provisions concerning preliminary rulings

50. Article 234 of the Treaty establishing the European Community (applicable at the relevant time and replaced by Article 267 of the TFEU) read as follows:

"The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

...

(b) the validity and interpretation of acts of the institutions of the Community and of the ECB;

...

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice."

51. In the case of *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health* (Case 283/81, judgment of 6 October 1982, ECR 3415), the CJEU spelled out the extent of the obligation imposed by the former Article 177(3) of the Treaty establishing the European Economic Community (equivalent to the third paragraph of Article 234 of the Treaty establishing the European Community). It held as follows:

"The third paragraph of Article 177 ... is to be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its

interpretation gives rise and the risk of divergences in judicial decisions within the Community.”

52. The scope of that case-law was further defined in the case of *Ferreira da Silva e Brito and Others v Estado português* (Case C-160/14, judgment of 9 September 2015), in which the CJEU held as follows:

“36. By its second question, the referring court seeks to ascertain whether, in circumstances such as those at issue in the main proceedings and, in particular, because of the fact that lower courts have given conflicting decisions concerning the interpretation of the concept of a ‘transfer of a business’ within the meaning of Article 1(1) of Directive 2001/23, the third paragraph of Article 267 TFEU must be construed as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is in principle obliged to refer the matter to the Court of Justice in order to obtain an interpretation of that concept.

37. In that regard, although it is true that the procedure laid down in Article 267 TFEU is an instrument for cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them, the fact remains that when there is no judicial remedy under national law against the decision of a court or tribunal of a Member State, that court or tribunal is, in principle, obliged to bring the matter before the Court of Justice under the third paragraph of Article 267 TFEU where a question relating to the interpretation of EU law is raised before it (see judgment in *Consiglio nazionale dei geologi and Autorità garante della concorrenza e del mercato*, C-136/12, EU:C:2013:489, paragraph 25 and the case-law cited).

38. As regards the extent of that obligation, it follows from settled case-law, beginning with the judgment in *Cilfit and Others* (283/81, EU:C:1982:335), that a court or tribunal against whose decisions there is no judicial remedy under national law is obliged, where a question of EU law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the provision of EU law concerned has already been interpreted by the Court or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt.

39. The Court has also made clear that the existence of such a possibility must be assessed in the light of the specific characteristics of EU law, the particular difficulties to which the interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union (judgment in *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 33).

40. It is true that the national court or tribunal has sole responsibility for determining whether the correct application of EU law is so obvious as to leave no scope for any reasonable doubt and for deciding, as a result, to refrain from referring to the Court a question concerning the interpretation of EU law which has been raised before it (see judgment in *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 37 and the case-law cited).

41. In itself, the fact that other national courts or tribunals have given contradictory decisions is not a conclusive factor capable of triggering the obligation set out in the third paragraph of Article 267 TFEU.

42. A court or tribunal adjudicating at last instance may take the view that, although the lower courts have interpreted a provision of EU law in a particular way, the interpretation that it proposes to give of that provision, which is different from the

interpretation espoused by the lower courts, is so obvious that there is no reasonable doubt.

43. However, so far as the area under consideration in the present case is concerned and as is clear from paragraphs 24 to 27 of this judgment, the question as to how the concept of a 'transfer of a business' should be interpreted has given rise to a great deal of uncertainty on the part of many national courts and tribunals which, as a consequence, have found it necessary to make a reference to the Court of Justice. That uncertainty shows not only that there are difficulties of interpretation, but also that there is a risk of divergences in judicial decisions within the European Union.

44. It follows that, in circumstances such as those of the case before the referring court, which are characterised both by conflicting lines of case-law at national level regarding the concept of a 'transfer of a business' within the meaning of Directive 2001/23 and by the fact that that concept frequently gives rise to difficulties of interpretation in the various Member States, a national court or tribunal against whose decisions there is no judicial remedy under national law must comply with its obligation to make a reference to the Court, in order to avert the risk of an incorrect interpretation of EU law.

45. Accordingly, the answer to the second question is that, in circumstances such as those of the case in the main proceedings, which are characterised both by the fact that there are conflicting decisions of lower courts or tribunals regarding the interpretation of the concept of a 'transfer of a business' within the meaning of Article 1(1) of Directive 2001/23 and by the fact that that concept frequently gives rise to difficulties of interpretation in the various Member States, the third paragraph of Article 267 TFEU must be construed as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is obliged to make a reference to the Court for a preliminary ruling concerning the interpretation of that concept."

B. Provisions concerning the recognition and enforcement of foreign judgments in civil and commercial matters

1. *Regulation No 44/2001 (Brussels I): version applied in the instant case*

(a) Text of the Regulation

53. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Brussels I Regulation") entered into force on 1 March 2002. It replaced the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 and was binding on all the European Union Member States with the exception of Denmark. The provisions cited below, which were applicable in the present case, remained in force until 10 January 2015, the date of entry into force of the new recast version, known as "Brussels I *bis*".

54. Recitals 16 to 18 of the Preamble to Regulation No 44/2001 read as follows:

“(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.

(18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.”

55. The relevant Articles of the Regulation read as follows:

Article 26

“1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

...”

Article 33

“1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

...”

Article 34

“A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

2. where it 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 defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

...”

Article 35

“1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. ...”

Article 36

“Under no circumstances may a foreign judgment be reviewed as to its substance.”

Article 37(1)

“A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.”

Article 38(1)

“A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.”

Article 41

“The judgment shall be declared enforceable ... without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.”

Article 43

“1. The decision on the application for a declaration of enforceability may be appealed against by either party.

...

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.”

Article 45

“1. The court with which an appeal is lodged under Article 43 ... shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.”

Article 46(1)

“The court with which an appeal is lodged under Article 43 ... may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.”

Article 54

“The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.”

(b) Explanatory memorandum concerning the proposal for a Regulation

56. In so far as relevant to the present case, the explanatory memorandum concerning the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters presented by the Commission (document COM/99/0348 final, published in the Official Journal of the European Communities C 376 E of 28 December 1999, pp. 1-17) stated as follows:

“2.2. Legal basis

The subject-matter covered by the [Brussels] Convention is now within the ambit of Article 65 of the Treaty; the legal basis for this proposal is Article 61(c) of that Treaty.

The form chosen for the instrument – a regulation – is warranted by a number of considerations. The Member States cannot be left with the discretion not only to determine rules of jurisdiction, the purpose of which is to achieve certainty in the law for the benefit of individuals and economic operators, but also the procedures for the recognition and enforcement of judgments, which must be clear and uniform in all Member States.

...

Section 2 - Enforcement

This Section describes the procedure to be followed either for formal recognition ... or for a declaration of enforceability in a Member State other than the State of origin of the judgment. The purpose of this procedure, of course, is to declare a judgment that is enforceable in the State of origin enforceable; there is no effect on actual enforcement of the judgment in the Member State addressed. The procedure is directed towards obtaining a rapid decision. Considerable changes have accordingly been made to the Brussels Convention mechanism. For one thing, the court or authority responsible for declaring the judgment enforceable in the Member State addressed has no power to proceed of its own motion to review the grounds for non-enforcement of the judgment provided for by Articles 41 and 42. These may be reviewed, if at all, only in the course of an appeal from the party against whom enforcement has been authorised. The court or competent authority is limited to making formal checks on the documents presented in support of the application; they are determined by the Regulation. Moreover, the grounds for non-recognition or non-enforcement have been narrowed down quite considerably.

...

Article 41 [corresponding to Article 34 of the EC Regulation]

This Article determines the sole grounds on which a court seised of an appeal may refuse or revoke a declaration of enforceability. These grounds have been reframed in a restrictive manner to improve the free movement of judgments.

For one thing, adding the adverb 'manifestly' in point 1 underscores the exceptional nature of the public policy ground. For another, the ground most commonly relied on by debtors to oppose enforcement has been modified to avoid abuses of procedure. To prevent enforcement being excluded, it will be enough for the defaulting defendant in the State of origin to have been served with notice in sufficient time and in such a way as to enable him to arrange for his defence. A mere formal irregularity in the service procedure will not debar recognition or enforcement if it has not prevented the debtor from arranging for his defence. Moreover, if the debtor was in a position to appeal in the State of origin on grounds of a procedural irregularity and has not done so, he is not entitled to invoke that procedural irregularity as a ground for refusing or revoking a declaration in the State addressed. ..."

(c) The CJEU's case-law

57. In the case of *Klomps v Michel* (Case C-166/80, judgment of 16 June 1981, ECR 1593), the CJEU further defined the scope of the guarantees contained in Article 27(2) of the Brussels Convention (corresponding in part to Article 34(2) of the Brussels I Regulation). It held that the provision in question remained applicable where the defendant had lodged an objection against a judgment given in default and a court of the State in which the judgment was given had held the objection to be inadmissible on the ground that the time for lodging an objection had expired. Furthermore, even where a court in the State of origin had held, in separate adversarial proceedings, that service had been duly effected, Article 27(2) still required the court in which enforcement was sought to examine whether service had been effected in sufficient time to enable the defendant to arrange for his defence.

58. In its judgment in *ASML Netherlands BV v Semiconductor Industry Services GmbH (SEMIS)*, cited above, the CJUE was called on to give a ruling as to whether the condition that it must have been "possible", within the meaning of Article 34(2) *in fine* of the Brussels I Regulation, to commence proceedings to challenge the default judgment, required the judgment to have been duly served on the defendant or whether it was sufficient for the latter to have become aware of its existence at the stage of the enforcement proceedings in the State in which enforcement was sought. The CJEU adopted the following reasoning:

"20. ... Article 34(2) of Regulation No 44/2001 does not necessarily require the document which instituted the proceedings to be duly served, but does require that the rights of defence are effectively respected.

21. Finally, Article 34(2) provides an exception to ground for refusal of recognition or enforcement of a judgment, that is to say, in the case where the defendant has failed to commence proceedings to challenge the judgment when it was possible for him to do so.

22. Therefore, Article 34(2) of Regulation No 44/2001 must be interpreted in the light of the objectives and the scheme of that regulation.

23. First, as regards the objectives of that regulation, it is clear from the 2nd, 6th, 16th and 17th recitals in the preamble that it seeks to ensure the free movement of judgments from Member States in civil and commercial matters by simplifying the formalities with a view to their rapid and simple recognition and enforcement.

24. However, that objective cannot be attained by undermining in any way the right to a fair hearing ...

25. The same requirement appears in the 18th recital in the preamble to Regulation No 44/2001, pursuant to which respect for the rights of defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability of a decision, if he considers one of the grounds for non-enforcement to be present.

...

29. Second, in relation to the scheme established by Regulation No 44/2001 as regards recognition and enforcement, it must be observed ... that the observance of the rights of defence of a defendant in default of appearance is ensured by a double review.

30. In the original proceedings in the State in which the judgment was given, it follows from the combined application of Articles 26(2) of Regulation No 44/2001 and Article 19(1) of Regulation No 1348/2000, that the court hearing the case must stay the proceedings so long as it is not shown that the defendant has been able to receive the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

31. If, during recognition and enforcement proceedings in the State in which enforcement is sought, the defendant commences proceedings against a declaration of enforceability issued in the State in which the judgment was given, the court hearing the action may find it necessary to examine a ground for non-recognition or enforcement, such as that referred to in Article 34(2) of Regulation No 44/2001.

32. It is in light of those considerations that it must be established whether, where the default judgment has not been served, the mere fact that the person against whom enforcement of the judgment is sought was aware of its existence at the stage of enforcement is sufficient to justify the conclusion that it was possible for him, within the meaning of Article 34(2) of Regulation No 44/2001, to commence proceedings to challenge that judgment.

33. It is common ground that, in the case in the main proceedings, the default judgment was not served on the defendant, so that the latter was unaware of its contents.

34. As the Austrian, German, Netherlands and Polish Government and the Commission of the European Communities have rightly argued in their observations submitted to the Court, the commencement of proceedings against a judgment is possible only if the person bringing those proceedings was able to familiarise himself with its contents, the mere fact that the person concerned is aware of the existence of that judgment being insufficient in that regard.

35. In order for the defendant to have the opportunity to bring proceedings enabling him to assert his rights, as provided for in the case-law set out in paragraphs 27 and 28

of this judgment, he should be able to acquaint himself with the grounds of the default judgment in order to challenge them effectively.

36. It follows that only knowledge by the defendant of the contents of the default judgment guarantees, in accordance with the requirements of respect for the rights of defence and the effective exercise of those rights, that it is possible for the defendant, within the meaning of Article 34(2) of Regulation No 44/2001, to commence proceedings to challenge that judgment before the courts of the State in which the judgment was given.

...

39. Article 34(2) of Regulation No 44/2001 does not mean, however, that the defendant is required to take additional steps going beyond normal diligence in the defence of his rights, such as those consisting in becoming acquainted with the contents of a judgment delivered in another Member State.

40. Consequently, in order to justify the conclusion that it was possible for a defendant to commence proceedings to challenge a default judgment against him, within the meaning of Article 34(2) of Regulation No 44/2001, he must have been aware of the contents of that decision, which presupposes that it was served on him.

...

49. In the light of all the foregoing considerations, the answer to the questions referred must be that Article 34(2) of Regulation No 44/2001 is to be interpreted as meaning that it is 'possible' for a defendant to bring proceedings to challenge a default judgment against him only if he was in fact acquainted with its contents, because it was served on him in sufficient time to enable him to arrange for his defence before the courts of the State in which the judgment was given."

59. In the case of *Bernardus Hendrikman and Maria Feyen v Magenta Druck & Verlag GmbH* (Case C-78/95, judgment of 10 October 1996, ECR I-4943), the CJEU found that where proceedings had been initiated against a person without his knowledge and a lawyer had appeared on his behalf but without his authority, the defendant was still to be regarded as being "in default of appearance" within the meaning of Article 27(2) of the Brussels Convention, even if the proceedings before the court first seised had become proceedings *inter partes*.

60. In *Trade Agency Ltd v Seramico Investments Ltd* (Case C-619/10, judgment of 6 September 2012), the CJEU was called on to give a ruling as to whether, where the judgment given in default of appearance in the Member State of origin was accompanied by the certificate referred to in Annex V to the Brussels I Regulation, the court of the Member State in which enforcement was sought could nevertheless check whether the information in the certificate was consistent with the evidence. The CJEU found as follows:

"32. Specifically as regards the ground mentioned in Article 34(2) of Regulation No 44/2001, to which Article 45(1) thereof refers, it must be held that it aims to ensure that the rights of defence of a defendant in default of appearance delivered in the Member State of origin are observed by a double review ... Under that system, where an appeal is lodged, the court of the Member State in which enforcement is sought must refuse or revoke the enforcement of a foreign judgment 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 defence, unless the defendant failed to commence proceedings to challenge the judgment whereas it was possible for him to do so.

33. In that context, it is common ground that whether the defendant was served with the document which instituted the proceedings is a relevant aspect of the overall assessment of a factual nature ..., which must be conducted by the court of the Member State in which enforcement is sought in order to ascertain whether that defendant has the time necessary in order to prepare his defence or to take the steps necessary to prevent a decision delivered in default of appearance.

34. That being the case, it must be observed that the fact that the foreign judgment is accompanied by the certificate cannot limit the scope of the assessment to be made pursuant to the double control, by the court of the Member State in which enforcement is sought, once it examines the ground for challenge mentioned in Article 34(2) of Regulation No 44/2001.

...

36. Next, ... since the court or authority competent to issue that certificate is not necessarily the same as that which gave the judgment whose enforcement is sought, that information can only have prima facie value. That follows also from the fact that production of the certificate is not obligatory, since in its absence in accordance with Article 55 of Regulation No 44/2001, the court in the Member State in which enforcement is sought which has jurisdiction to issue the declaration of enforceability may accept an equivalent document or, if it considers that it has sufficient information, dispense with requesting its production.

37. Finally, ... it must be stated that, as is clear from the wording of Annex V to the regulation, the information contained in the certificate is limited to '[d]ate of service of the document instituting the proceedings where judgment was given in default of appearance', without mentioning any other information which helps to ascertain whether the defendant was in a position to defend himself such as, in particular, the means of service or the address where service was effected.

38. It follows that, when examining the ground for challenge set out in Article 34(2) of Regulation No 44/2001, to which Article 45(1) thereof refers, the court of the Member State in which enforcement is sought has jurisdiction to carry out an independent assessment of all the evidence and thereby ascertain, where necessary, whether that evidence is consistent with the information in the certificate, for the purpose of establishing, first, whether the defendant in default of appearance was served with the document instituting proceedings and, second, if service was effected in sufficient time and in such a way as to enable him to arrange for his defence.

...

43. In that connection, the Court has already held that it is apparent from recitals 16 to 18 in the preamble to Regulation No 44/2001 that the system of appeals for which it provides against the recognition or enforcement of a judgment aims to establish a fair balance between, on the one hand, mutual trust in the administration of justice in the Union, and, on the other, respect for the rights of the defence, which means that the defendant should, where necessary, be able to appeal in an adversarial procedure against the declaration of enforceability if he considers one of the grounds for non-enforcement to be present (see, to that effect, Case C-420/07 *Apostolides* [2009] ECR I-3571, paragraph 73).

...

46. Having regard to all of the foregoing considerations, the answer to the first question is that Article 34(2) of Regulation No 44/2001, to which Article 45(1) thereof refers, read in conjunction with recitals 16 and 17 in the preamble, must be interpreted as meaning that, where the defendant brings an action against the declaration of enforceability of a judgment given in default of appearance in the Member State of origin which is accompanied by the certificate, claiming that he has not been served with the document instituting the proceedings, the court of the Member State in which enforcement is sought hearing the action has jurisdiction to verify that the information in that certificate is consistent with the evidence."

61. In the case of *Apostolides v Orams* (Case C-420/07, judgment of 28 April 2009, ECR I-3571), meanwhile, the CJEU stated:

"55. As a preliminary point, it should be recalled that Article 34 of Regulation No 44/2001 must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of that regulation... With regard, more specifically, to the public-policy clause in Article 34(1) of the regulation, it may be relied on only in exceptional cases ...

...

73. ... [I]t is apparent from recitals 16 to 18 in the preamble to Regulation No 44/2001 that the system of appeals for which it provides against the recognition or enforcement of a judgment aims to establish a fair balance between, on the one hand, mutual trust in the administration of justice in the Union, which justifies judgments given in a Member State being, as a rule, recognised and declared enforceable automatically in another Member State and, on the other hand, respect for the rights of the defence, which means that the defendant should, where necessary, be able to appeal in an adversarial procedure against the declaration of enforceability if he considers one of the grounds for non-enforcement to be present.

74. The Court has had occasion, in Case C-283/05 ASML [2006] ECR I-12041, to make clear the differences between Article 34(2) of Regulation No 44/2001 and Article 27(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ...

75. Article 34(2) of Regulation No 44/2001, unlike Article 27(2) of the Convention, does not necessarily require the document which instituted the proceedings to be duly served, but does require that the rights of the defence are effectively respected ...

76. Under Articles 34(2) and 45(1) of Regulation No 44/2001, the recognition or enforcement of a default judgment must be refused, if there is an appeal, 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 defence, unless the defendant failed to commence proceedings to challenge that judgment before the courts of the Member State of origin when it was possible for him to do so.

77. It is clear from the wording of those provisions that a default judgment given on the basis of a document instituting proceedings which was not served on the defendant in sufficient time and in such a way as to enable him to arrange for his defence must be recognised if he did not take the initiative to appeal against that judgment when it was possible for him to do so.

...

80. In the light of the foregoing, the answer to the ... question [referred for a preliminary ruling] is that the recognition or enforcement of a default judgment cannot

be refused under Article 34(2) of Regulation No 44/2001 where the defendant was able to commence proceedings to challenge the default judgment and those proceedings enabled him to argue that he had not been served with the document which instituted the proceedings or with the equivalent document in sufficient time and in such a way as to enable him to arrange for his defence."

2. *Regulation No 1215/2012 (Brussels I* bis*): new recast version*

62. The recast version of the Brussels I Regulation (known as "Brussels I *bis*"), introduced by 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 (recast), entered into force on 10 January 2015.

63. Article 39 of the new version abolished the declaration of enforceability (*exequatur*) procedure and established the principle of automatic enforceability of judgments given in another Member State. It provides as follows:

> "A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required."

64. However, Article 45(1) of the new version reiterates the terms of Article 34(2) of the Brussels I Regulation:

> "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 defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
>
> ..."

C. Provisions concerning service of judicial documents

65. Prior to 1 May 2004, the date of accession of Cyprus and Latvia to the European Union, the service of judicial documents between the two countries was governed by the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which was ratified both by Cyprus (where it entered into force on 1 June 1983) and by Latvia (where it entered into force on 1 November 1995). This Convention applies in all cases where a judicial or extrajudicial document is to be transmitted for service abroad, except where the address of the person to be served with the document is not known.

66. Since the accession of Cyprus and Latvia to the European Union on 1 May 2004, the service of judicial documents has been governed by the EC Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The first version of this Regulation (Council Regulation (EC) No 1348/2000 of 29 May 2000) was repealed and replaced on 30 December 2007 by a new version (Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007).

III. RELEVANT LAW OF THE RESPONDENT STATE

67. At the material time the relevant sections of the Latvian Civil Procedure Law (*Civilprocesa likums*) read as follows:

Section 8(1)

"The court shall establish the circumstances of the case by assessing evidence obtained in accordance with the law."

Section 9

"1. The parties shall have equal procedural rights.

2. The court shall ensure that the parties are able to exercise on an equal footing the rights conferred on them for the defence of their interests."

Section 230(1)

"In the decision [*lēmums*; not ruling on the merits] the court or judge shall indicate:

...

(7) the detailed arrangements and time-limits for lodging an appeal against the decision."

Section 637(2)

"Recognition of a foreign judgment shall be refused only if one of the following grounds for non-recognition exists:

...

(2) the foreign judgment has not become enforceable in accordance with the law;

(3) the defendant has been unable to defend his or her rights, particularly where judgment was given in default and the defendant was not duly and promptly summoned to appear before the court, unless he or she had the opportunity to appeal against the judgment and did not do so;

...

(6) such recognition would be contrary to Latvian public policy [*sabiedriskā iekārta*];

..."

Section 644

> "1. After it has been recognised, a foreign judgment which is enforceable in the State in which it was given shall be enforced in accordance with the present Law.
>
> 2. With regard to the rules on the enforcement of judgments laid down by Council Regulation No 44/2001 ..., the provisions of [this] Chapter ... concerning recognition of judgments given by foreign courts shall apply in so far as [Regulation No 44/2001] so provides."

IV. RELEVANT ELEMENTS OF CYPRIOT LAW

68. In accordance with the relevant provisions of Cypriot law furnished by the Cypriot Government (see paragraph 10 above), a defendant against whom judgment has been given in default may apply to have the judgment set aside (Order 17, Rule 10 of the Civil Procedure Rules). The lodging of such an application is not subject to any time-limit; however, the defendant must provide a reasonable explanation for his or her failure to appear. Hence, according to the case-law of the Cypriot courts, a defendant may lodge an application to set aside in two sets of circumstances:

(a) where the defendant was not duly summoned to appear before the court which gave judgment. In such cases the judge is required to set aside the judgment given in default; he or she has no discretion to decide otherwise;

(b) where the defendant was duly summoned but produces an affidavit putting forward an arguable case and explaining why he did not appear (for example, because he did not know about the proceedings, he had instructed a lawyer to appear on his behalf but the lawyer failed to do so, or he made an honest and reasonable mistake as to the deadline for appearing before the court). In such cases the court *may* grant the application to set aside but is not required to do so (Supreme Court judgment in the case of *Phylactou v. Michael* (1982, 1 A.A.D., 204).

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

69. The applicant claimed to be the victim of a violation of Article 6 § 1 of the Convention. He complained that in issuing a declaration of enforceability in respect of the judgment of the Limassol District Court of 24 May 2004, which in his view was clearly defective as it had been given in breach of his defence rights, the Senate of the Latvian Supreme Court had infringed his right to a fair hearing. Article 6 § 1, in so far as relevant to the present case, provides:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Chamber judgment

70. In its judgment the Chamber began by observing that, since the complaint against Cyprus had been declared inadmissible as being out of time (see paragraph 4 above), the Court did not have jurisdiction to determine whether the Limassol District Court had complied with Article 6 § 1 of the Convention. The scope of the case was therefore confined to ascertaining whether, in ordering the enforcement of the Cypriot judgment in Latvia, the Latvian courts had observed the fundamental principles of a fair hearing within the meaning of that provision. In that connection the Chamber found that the observance by the State of its legal obligations arising out of membership of the European Union was a matter of general interest and that this also applied to the implementation of the Brussels I Regulation, based on the principle of "mutual trust in the administration of justice". The Latvian courts had therefore had a duty to ensure the recognition and rapid and effective enforcement of the Cypriot judgment in Latvia. The Chamber further observed that the protection of fundamental rights afforded by the European Union was in principle equivalent to that for which the Convention provided (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, §§ 160-65, ECHR 2005-VI).

71. The Chamber further considered that, having borrowed a sum of money from a Cypriot company and signed an acknowledgment of debt deed governed by Cypriot law and subject to the jurisdiction of the Cypriot courts, the applicant could have been expected to familiarise himself with the legal consequences of any failure on his part to repay the debt and with the manner in which any proceedings would be conducted in Cyprus. In the Chamber's view, the onus had been on the applicant to demonstrate that he had had no effective remedy in the Cypriot courts; however, he had not demonstrated this either before the Senate of the Latvian Supreme Court or before the Strasbourg Court. The Chamber therefore concluded that in dismissing the applicant's arguments simply by reference to the fact that he had not appealed against the Cypriot judgment, the Supreme Court had taken sufficient account of the rights protected by Article 6 § 1 of the Convention. There had therefore been no violation of that provision in the present case.

72. Lastly, the Chamber did not find any appearance of a violation with regard to the applicant's other allegations under Article 6 § 1.

B. The parties' submissions

1. The applicant

73. In his request for referral to the Grand Chamber and his oral pleadings at the hearing, the applicant put forward the following arguments. He submitted at the outset that the presumption of equivalent protection (the "*Bosphorus* presumption") was inapplicable in the present case for two reasons. Firstly, under the Brussels I Regulation the higher courts in Latvia (the Regional Court and the Senate of the Supreme Court) had not been obliged automatically to recognise the Cypriot judgment. On the contrary, Articles 34 and 35 of the Regulation had afforded them a broad margin of discretion to check that the applicant's fundamental procedural rights had been respected in the State of origin and to decide whether or not the judgment should be enforced in Latvia. To that extent, the Latvian courts had therefore retained full responsibility for ensuring compliance with the requirements of Article 6 § 1 of the Convention. Moreover, in declaring the judgment to be enforceable, the Senate of the Supreme Court had clearly breached the terms of Article 34(2) of the Regulation as interpreted by the CJEU. In that connection the applicant referred to the CJEU's judgment in the *Trade Agency* case (see paragraph 60 above) and to the subsequent rulings of the Senate of the Latvian Supreme Court. In two cases, the latter had carefully examined whether the defendants had been duly and promptly summoned to appear before the courts in the State of origin. In both cases, the defendants had not attempted to appeal against the judgments in question and the Senate had not criticised them on that account.

74. Secondly, the present case was to be distinguished from the *Bosphorus* case in so far as, in this case, the Senate of the Supreme Court had failed in its duty to consider requesting a preliminary ruling from the CJEU. The applicant acknowledged that he had never requested that such a ruling be sought, but argued that he had had no opportunity to do so since only the other party had been allowed to make submissions on the merits of the case at the hearing of 31 January 2007. Hence, the Latvian courts had not made use of the review mechanisms existing in the European Union legal system. In the applicant's view, if the Latvian Supreme Court had requested a preliminary ruling from the CJEU, the latter would most likely have indicated that it was empowered to verify whether the applicant had been duly informed of the proceedings before the Cypriot court and whether it had been, or still was, open to him to appeal against the Cypriot judgment. The applicant referred in that connection to paragraph 38 of the *Trade Agency* judgment, cited at paragraph 60 above. In his view, the present case was therefore more akin to the case of *Michaud v. France* (no. 12323/11, §§ 112-115, ECHR 2012), in which the Court had found that the *Bosphorus* presumption did not apply, for several reasons including the one just cited.

75. The applicant acknowledged that the observance by the State of its legal obligations arising out of membership of the European Union was a matter of general interest. However, it would be erroneous and inconsistent with the Court's settled case-law to find, as the Chamber had done in its judgment, that this reason alone constituted a legitimate aim sufficient to justify restricting the rights guaranteed by the Convention. In the Court's case-law, that objective had never been regarded as sufficient justification for interference with fundamental rights unless it was accompanied by other legitimate aims such as the prevention of crime (the applicant referred to *Michaud*, cited above) or the protection of the rights of others (he referred to *Povse v. Austria* (dec.), no. 3890/11, 18 June 2013). In the applicant's submission, since the Brussels I Regulation had not required the Latvian authorities to enforce the Cypriot judgment automatically and unconditionally, the interference in question had not pursued any legitimate aim.

76. In the applicant's view, his situation was fundamentally different from that in the *Orams* case, which had been the subject of proceedings before both the CJEU (see paragraph 61 above) and the European Court of Human Rights (see *Orams v. Cyprus* (dec.), no. 27841/07, 10 June 2010). In that case, the applicants had been able to appeal against the impugned judgment. Their lawyer had been informed of the hearing before the Cypriot Supreme Court at which their appeal was to be examined and had actually appeared and pleaded his clients' case. In Strasbourg, the applicants had complained only of the lack of written notice and the Court had found that the guarantees of Article 6 § 1 did not extend to requiring written notice to be given. In the present case, by contrast, the applicant had never been served with the document instituting the proceedings.

77. The applicant further submitted that, having repaid his contractual debt of his own free will, he could not have expected that proceedings would be brought against him in Cyprus. The Senate of the Latvian Supreme Court should have satisfied itself that the possibility of appealing against the impugned judgment in Cyprus existed in law and in fact, instead of placing the entire burden of proof on the applicant. In his submission, he should not be criticised for not attempting to appeal against the Cypriot judgment, for three reasons. Firstly, the judgment itself had contained no reference to the available judicial remedies. Secondly, placing such a burden of proof on him ran counter to the approach taken by the CJEU in the *ASML* judgment, according to which "it [was] 'possible' for a defendant to bring proceedings to challenge a default judgment against him only if he [was] in fact acquainted with its contents, because it was served on him in sufficient time to enable him to arrange for his defence before the courts of the State in which the judgment was given" (see paragraph 58 above). Thirdly, according to the information supplied by the Cypriot Government, the possibility of an appeal lodged out of time being allowed in Cyprus was highly speculative and was a matter for the court's discretion

(see paragraph 68 above). Moreover, since the Riga Regional Court judgment of 2 October 2006 refusing to declare the judgment enforceable had been in his favour (see paragraph 32 above), the applicant had had no reason to attempt to lodge an appeal in Cyprus at that point.

78. In view of all the above considerations the applicant submitted that, in declaring the Cypriot judgment enforceable and refusing to examine his argument that he had not been duly notified of the examination of the case by the Cypriot court, the Latvian courts had failed to observe the guarantees of a fair hearing, in breach of Article 6 § 1 of the Convention.

79. Lastly – still from the standpoint of Article 6 § 1 – the applicant criticised the way in which the hearing of 31 January 2007 before the Senate of the Supreme Court had been conducted. He complained in particular that the principle of equality of arms had not been respected and that the Senate had refused to provide him with a copy of the record of the hearing.

2. The respondent Government

80. Unlike the applicant, the respondent Government were of the view that the *Bosphorus* presumption applied in the present case. Firstly, they submitted that the grounds for non-recognition provided for in Article 34(2) of the Brussels I Regulation could not be interpreted as granting the court in the Member State in which enforcement was sought a margin of discretion, as the grounds for refusing recognition were clearly set out in the text of that Article. Referring to the explanatory memorandum concerning the proposal for a Regulation (see paragraph 56 above) and to the CJEU's judgment in the case of *Apostolides v. Orams* (see paragraph 60 above), the respondent Government submitted that the legal form of a regulation had been expressly chosen by the European Union institutions in order not to leave any discretion to the Member States. The provisions of the Regulation were autonomous and could not be interpreted or applied in the light of domestic law, and Article 34 had to be interpreted strictly since it constituted an obstacle to the attainment of one of the fundamental objectives of the Regulation as a whole. Furthermore, the court with jurisdiction to rule on the enforcement of the judgment in the Member State in question did not have any authority to review the possible grounds for non-enforcement on its own initiative. Consequently, the Senate of the Supreme Court had not enjoyed any discretion in deciding to recognise and enforce the Limassol District Court judgment. In so doing, it had simply complied with its strict obligations arising out of Latvia's membership of the European Union.

81. Secondly, the respondent Government asserted that the sole fact that the Senate of the Supreme Court had not made full use of the review mechanism provided for by EU law did not result in the rebuttal of the *Bosphorus* presumption. In their submission, the application of that presumption could not be made subject to a requirement for the domestic courts to request a preliminary ruling from the CJEU in all cases without

exception, as this would run counter to the spirit of cooperation that must govern relations between the domestic courts and the CJEU. The domestic courts referred a question for a preliminary ruling only where they had doubts as to the correct interpretation or application of EU legislation. They were not required to do so if they found that the question raised was not relevant, that the provision in question had already been interpreted by the CJEU or that the correct application of EU law was so obvious as to leave no scope for reasonable doubt. That was precisely the situation in the present case, as the CJEU's existing case-law had been sufficiently explicit with regard to the meaning and scope of the requirements of Article 34(2) of the Brussels I Regulation. Moreover, if the applicant had considered it necessary to obtain clarifications on that provision, he could have asked the Senate of the Supreme Court to refer the matter to the CJEU for a preliminary ruling. The fact that he had not done so was an indication that he had considered such a move to serve no purpose.

82. The respondent Government added that, in rejecting the applicant's argument that he had not been duly informed of the proceedings on the sole ground that he had not challenged the Cypriot judgment, the Senate of the Latvian Supreme Court had acted in full conformity with Article 34(2) of the Brussels I Regulation as interpreted by the CJEU. The applicant had at no point alleged, still less proved, before the domestic courts or the Strasbourg Court that he had at least attempted to institute appeal proceedings in Cyprus. Moreover, it was reasonable to consider that in view of the six-month period that had elapsed between June 2006 (when the applicant had been apprised of the content of the Cypriot judgment) and January 2007 (when the Senate of the Supreme Court had examined the case), the applicant had had sufficient time to lodge an appeal in Cyprus. On that point the respondent Government referred to the Cypriot Government's observations, from which it was clear that such a remedy had been available in theory and in practice and had not been subject to a strict time-limit (see paragraph 68 above). They submitted that Article 34(2) of the Brussels I Regulation was based on the premise that any defects in a judgment given in default should be remedied in the country of origin. If the applicant had lodged an appeal with the Cypriot courts, the Latvian Supreme Court could have stayed or adjourned the enforcement proceedings in accordance with Articles 37(1) and 46(1) of the Regulation. In omitting, without any real justification, to lodge such an appeal, the applicant had effectively prevented the Latvian courts from refusing enforcement of the judgment.

83. Observing that the applicant had been an investment consultant, the respondent Government further submitted that he should have known that failure to repay his debt would result in proceedings in the Cypriot courts and that the summons would be sent to the address indicated in the acknowledgment of debt deed. As the applicant had not provided his true address to the company with which he had entered into the loan agreement, his conduct might possibly be characterised as an abuse of rights for the

purposes of Article 17 of the Convention. Furthermore, given that the applicant had consented to the application of Cypriot law, he must be assumed to have been very familiar with the legal system in Cyprus, including the available remedies. Consequently, his argument that the Cypriot judgment had contained no references to the available judicial remedies lacked any relevance, bearing in mind that neither the Brussels I Regulation, nor Cypriot law, nor Article 6 § 1 of the Convention required the courts to insert such a reference in their judgments. Hence, the situation of which the applicant complained before the Court had resulted essentially from his own conduct.

84. The respondent Government submitted that one of the European Union's objectives was to secure the effective functioning of the common market. Attainment of and compliance with that objective, and mutual trust in the administration of justice, constituted a general interest sufficient to justify certain restrictions on the right to a fair hearing, especially since the fairness of proceedings was also a fundamental principle of EU law recognised by the CJEU. Hence, the system established by the Brussels I Regulation respected the right to a fair hearing. Accordingly, and in the light of the *Bosphorus* presumption, the respondent Government requested the Court to find that the Senate of the Supreme Court had taken sufficient account of the applicant's rights under Article 6 § 1 of the Convention.

85. Lastly, the respondent Government rejected the applicant's claims that the hearing of 31 January 2007 had been conducted unfairly. In their submission, it was clear from the Supreme Court judgment that the applicant's lawyer had had an opportunity to make oral pleadings at the hearing. The reason why no record had been drawn up was that this was not required under domestic law in such a case. Furthermore, Article 6 § 1 did not require the domestic courts to produce a written record of every hearing.

C. Observations of the third-party interveners

1. *The Estonian Government*

86. The Estonian Government explained the *ratio legis* behind Article 34 of the Brussels I Regulation (as applicable at the material time). This Article had been very carefully drafted and struck a balance between respect for the rights of the defence and the need to ensure, by simplifying the formalities, rapid and straightforward recognition and enforcement in each Member State of judgments in civil and commercial matters emanating from another Member State. The manner in which the provision in question was drafted left no discretion to the courts in the Member State in which enforcement was sought, especially since the abundant and clear case-law of the CJEU provided them with precise guidelines as to its application. For that reason, the application of the *Bosphorus* presumption was not subject to a requirement for the courts of the Member States systematically to request

a preliminary ruling from the CJEU whenever Article 34(2) of the Brussels I Regulation was applicable.

87. The Estonian Government attached considerable weight to the fact that the two States concerned, Cyprus and Latvia, were Parties to the Convention and subject to the Court's jurisdiction. Accordingly, unlike in cases where the judgment to be enforced emanated from a third country, the court from which the declaration of enforceability was sought did not have to satisfy itself that the proceedings in the State of origin had generally conformed to the requirements of Article 6 § 1 of the Convention. Its review should be confined to the formalities of the enforcement proceedings, as it remained open to the defendant to assert his or her Article 6 § 1 rights in the courts of the State of origin.

88. In the Estonian Government's submission, where defendants against whom judgment had been given in default did not lodge an appeal against the judgment in question in the State of origin after they had been made aware of it, and failed to demonstrate that such a remedy would be impossible or ineffective, the court in the State in which enforcement was sought had no discretion, in examining an appeal in the context of the enforcement proceedings, to refuse the other party's request for recognition and enforcement. In view of the overall rationale behind Article 34(2) of the Brussels I Regulation and the general principles of civil procedure, it was reasonable for the burden of proof in that regard to be placed on the defendant. Article 34(2) of the Brussels I Regulation afforded individuals a standard of protection equivalent to that provided by Article 6 § 1 of the Convention for the purposes of the *Bosphorus* case-law, and thus required the State addressed to enforce the judgment as swiftly as possible.

2. The European Commission

89. The European Commission submitted that the presumption of equivalent protection, known as the *Bosphorus* presumption, was applicable in the present case. It confirmed that under Article 45(1) of the Brussels I Regulation the court in which the declaration of enforceability was requested could refuse the request only on one of the grounds set forth in Articles 34 and 35 of the Regulation. Hence, the courts of the Member States could not exercise any discretion in ordering the enforcement of a judgment given in another Member State. Such an act fell strictly within the scope of the international legal obligations of the Member State in which enforcement was sought, arising out of its membership of the European Union.

90. As to the fact that in the present case, as in the case of *Michaud* (cited above), the domestic courts had not sought a preliminary ruling from the CJEU, the European Commission submitted that there was nevertheless one significant difference between the two cases. In this case, unlike in *Michaud*, it could not be said that the "full potential of the [preliminary

ruling] procedure" had not been deployed, given that the applicant had not asked the courts in the respondent State to refer the question for a preliminary ruling or even raised any doubts as to the compatibility of the relevant provisions of European Union law with the Convention right whose violation he now alleged before the Court. The Commission further noted that a request for a preliminary ruling did not constitute a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention. In general terms, the Commission submitted that the application of the *Bosphorus* presumption could not be made subject to a requirement for the courts of the EU Member States to seek a preliminary ruling from the CJEU whenever they were called on to apply the provisions of EU law. Even assuming that EU law imposed an obligation on the domestic court concerned to seek a preliminary ruling, failure to comply with that obligation should not be "penalised" by a refusal on the part of the European Court of Human Rights to apply the presumption of equivalent protection.

91. In the European Commission's view, the recognition and enforcement machinery established by the Brussels I Regulation was compatible in itself with the right to a fair hearing protected by Article 6 § 1 of the Convention. Article 34(2) of the Regulation had to be read together with the other relevant provisions of the Regulation and with the Regulations on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (see paragraph 66 above). The combined effect of those provisions meant that the right to a fair hearing was guaranteed not only during the stage of recognition and enforcement of a judgment but also earlier, at the stage of the court proceedings in the Member State of origin. Recognition and enforcement did not depend on whether the document instituting the proceedings had been served in accordance with the formal requirements, but rather on a specific examination of whether the defendant's right to adversarial process had in fact been respected. The Commission further observed that Article 34(1) of the Regulation provided for recognition and enforcement to be refused where "recognition [was] manifestly contrary to public policy in the Member State in which recognition [was] sought". In the Commission's view, this provision afforded an even greater degree of protection of fundamental rights as it did not require an appeal to be lodged in the State of origin.

92. The Commission submitted that in interpreting the conditions laid down in Article 34(2) of the Brussels I Regulation, the CJEU had been concerned to protect the right of defendants in default of appearance to a fair hearing. In particular, in its judgment in *ASML* (cited at paragraph 58 above), it had held that a defendant in default of appearance could be deemed to have been in a position to bring proceedings to challenge a judgment given against him only if he was in fact acquainted with its contents, which presupposed that it had been served on him. Simply being aware of the existence of a judgment was not sufficient in that regard.

Hence, the existence or otherwise of remedies in the country of origin had to be assessed with reference to the point at which the defendant had actually been apprised of the content of the judgment as distinct from merely learning of its existence. It was true that Article 43 of the Brussels I Regulation did not require the court in which the declaration of enforceability was requested to automatically examine whether the circumstances enumerated in Article 34(2) applied, including the possibility of lodging an appeal in the State of origin. However, in the Commission's view, this had no bearing on compliance with Article 6 § 1 of the Convention, since in principle neither that provision nor European Union law governed the admissibility of evidence and its assessment by the domestic courts.

93. In sum, the European Commission submitted that, far from providing for "automatic" recognition and enforcement of judgments given in another Member State, the Brussels I Regulation made recognition and enforcement contingent on respect for the right to adversarial process and hence for the right to a fair hearing within the meaning of Article 6 § 1 of the Convention.

3. The AIRE Centre

94. The AIRE Centre stressed the need to safeguard the right to a fair hearing in the context of the procedure for the recognition and enforcement of judgments within the European Union, and the duty of the domestic courts to secure that right. A court hearing an appeal against the recognition and enforcement of a foreign judgment could not confine its attention to verifying compliance with the formal requirements of Article 34(2) of the Brussels I Regulation or (after 10 June 2015) those of Article 45(1)(a) of the Brussels I *bis* Regulation. On the contrary, where the rights of the defence had been breached in the State of origin, the court could and should make use of Article 34(1) of the Brussels I Regulation or Article 45(1) of the Brussels I *bis* Regulation, according to which the request for recognition and enforcement had to be refused if "recognition [was] manifestly contrary to public policy in the Member State in which recognition [was] sought". In the AIRE Centre's submission, if the court failed to do so it would be committing a manifest error of interpretation of European Union law. In other words, the court hearing the appeal had discretion to refuse enforcement of the judgment if it had been given in breach of the rights of the defence.

95. The AIRE Centre further submitted that the Court should review its current approach to the *Bosphorus* presumption, especially in the light of the stance adopted by the CJEU in the *Melloni* judgment and in Opinion 2/13 (see paragraphs 47 and 49 above). It maintained in particular that the conclusions of Opinion 2/13, and especially of paragraph 192, were

radically at odds with protection of the human rights guaranteed by the Convention.

D. The Court's assessment

1. *Preliminary considerations*

96. The Court reiterates at the outset that, as regards disputes whose outcome is decisive for civil rights, Article 6 § 1 of the Convention is applicable to the execution of foreign final judgments (see *McDonald v. France* (dec.), no. 18648/04, 29 April 2008; *Saccoccia v. Austria*, no. 69917/01, §§ 60-62, 18 December 2008; and *Sholokhov v. Armenia and the Republic of Moldova*, no. 40358/05, § 66, 31 July 2012). It is not disputed that the Limassol District Court judgment of 24 May 2004, ordering the applicant to pay a contractual debt together with the corresponding interest and the costs and expenses in respect of the proceedings, concerned the substance of a "civil" obligation on the part of the applicant. Article 6 § 1 is therefore applicable in the present case.

97. The judgment of 24 May 2004 was given by a Cypriot court and the Latvian courts ordered its enforcement in Latvia. Consequently, the applicant's complaints under Article 6 of the Convention as set out in his application concerned both the Cypriot proceedings and those in Latvia. With regard to the former, the applicant complained that his defence rights had been infringed, while in the case of the latter he complained that the courts had validated the proceedings in Cyprus by ordering the recognition and enforcement of the judgment. However, the Court declared the complaint against Cyprus inadmissible as being out of time (partial decision of 3 March 2010, see paragraph 4 above). At the present stage of the proceedings the application therefore concerns Latvia alone. Accordingly, the Court does not have jurisdiction *ratione personae* to give a formal ruling on whether the Limassol District Court complied with the requirements of Article 6 § 1. However, it must ascertain whether, in declaring the Cypriot judgment to be enforceable, the Latvian courts acted in accordance with that provision (see, *mutatis mutandis*, *Pellegrini v. Italy*, no. 30882/96, §§ 40-41, ECHR 2001-VIII). In doing so the Court cannot but have regard to the relevant aspects of the proceedings in Cyprus.

98. The Court considers that a decision to enforce a foreign judgment cannot be regarded as compatible with the requirements of Article 6 § 1 of the Convention if it was taken without the unsuccessful party having been afforded any opportunity of effectively asserting a complaint as to the unfairness of the proceedings leading to that judgment, either in the State of origin or in the State addressed. In their third-party submissions the Estonian Government stressed the importance of the distinction between the enforcement of a judgment emanating from another Contracting Party to the Convention and that of a judgment given by the authorities of a State that

was not a Party to the Convention. In the first case, where there was a presumption that the parties could secure protection of their Convention rights in the country of origin of the judgment, the review by the court in the State addressed should be more limited than in the second case (see paragraph 87 above). The Court notes that it has never previously been called upon to examine observance of the guarantees of a fair hearing in the context of mutual recognition based on European Union law. However, it has always applied the general principle whereby a court examining a request for recognition and enforcement of a foreign judgment cannot grant the request without first conducting some measure of review of that judgment in the light of the guarantees of a fair hearing; the intensity of that review may vary depending on the nature of the case (see, *mutatis mutandis*, *Drozd and Janousek v. France and Spain*, 26 June 1992, § 110, Series A no. 240, and *Pellegrini,* cited above, § 40). In the present case the Court must therefore determine, in the light of the relevant circumstances of the case, whether the review conducted by the Senate of the Latvian Supreme Court was sufficient for the purposes of Article 6 § 1.

99. The Court emphasises that, in accordance with Article 19 of the Convention, its sole duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly made by a national court in assessing the evidence before it, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The Court cannot itself assess the facts which have led a national court to adopt one decision rather than another; otherwise, it would be acting as a court of fourth instance and would disregard the limits imposed on its action (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012). Accordingly, it does not have jurisdiction to rule on issues of fact raised before it such as the applicant’s claim that he had repaid his debt before the proceedings were instituted against him (see paragraphs 15 and 77 above).

100. The Court further notes that the recognition and enforcement of the Cypriot judgment took place in accordance with Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as the Brussels I Regulation), which was applicable at the relevant time. The applicant alleged that the Senate of the Supreme Court had breached Article 34(2) of that Regulation and the corresponding provision of the Latvian Civil Procedure Law. The Court reiterates that it is not competent to rule formally on compliance with domestic law, other international treaties or European Union law (see, for example, *S.J. v. Luxembourg*, no. 34471/04, § 52, 4 March 2008, and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 110, 3 October 2014). The task of interpreting and applying the provisions of the Brussels I Regulation falls firstly to the CJEU, in the

context of a request for a preliminary ruling, and secondly to the domestic courts in their capacity as courts of the Union, that is to say, when they give effect to the Regulation as interpreted by the CJEU. The jurisdiction of the European Court of Human Rights is limited to reviewing compliance with the requirements of the Convention, in this case with Article 6 § 1. Consequently, in the absence of any arbitrariness which would in itself raise an issue under Article 6 § 1, it is not for the Court to make a judgment as to whether the Senate of the Latvian Supreme Court correctly applied Article 34(2) of the Brussels I Regulation or any other provision of European Union law.

2. *The presumption of equivalent protection (the* Bosphorus *presumption)*

(a) Scope of the presumption of equivalent protection

101. The Court reiterates that, even when applying European Union law, the Contracting States remain bound by the obligations they freely entered into on acceding to the Convention. However, those obligations must be assessed in the light of the presumption established by the Court in the *Bosphorus* judgment and developed in *Michaud* (both cited above; see also *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 338, ECHR 2011, and *Povse*, cited above, § 76). In *Michaud*, the Court summarised its case-law on this presumption in the following terms:

> "102. The Court reiterates that absolving the Contracting States completely from their Convention responsibility where they were simply complying with their obligations as members of an international organisation to which they had transferred a part of their sovereignty would be incompatible with the purpose and object of the Convention: the guarantees of the Convention could be limited or excluded at will, thereby depriving it of its peremptory character and undermining the practical and effective nature of its safeguards. In other words, the States remain responsible under the Convention for the measures they take to comply with their international legal obligations, even when those obligations stem from their membership of an international organisation to which they have transferred part of their sovereignty (see *Bosphorus*, cited above, § 154).
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> 103. It is true, however, that the Court has also held that action taken in compliance with such obligations is justified where the relevant organisation protects fundamental rights, as regards both the substantive guarantees offered and the mechanisms controlling their observance, in a manner which can be considered at least equivalent – that is to say not identical but 'comparable' – to that for which the Convention provides (it being understood that any such finding of 'equivalence' could not be final and would be susceptible to review in the light of any relevant change in fundamental rights protection). If such equivalent protection is considered to be provided by the organisation, the presumption will be that a State has not departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation.
>
> However, a State will be fully responsible under the Convention for all acts falling outside its strict international legal obligations, notably where it has exercised State

> discretion (see *M.S.S. v. Belgium and Greece*, cited above, § 338). In addition, any such presumption can be rebutted if, in the circumstances of a particular case, it is considered that the protection of Convention rights was manifestly deficient. In such cases, the interest of international cooperation would be outweighed by the Convention's role as a 'constitutional instrument of European public order' in the field of human rights (see *Bosphorus*, cited above, §§ 152-58, and also, among other authorities, *M.S.S. v. Belgium and Greece*, cited above, §§ 338-40).
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> 104. This presumption of equivalent protection is intended, in particular, to ensure that a State Party is not faced with a dilemma when it is obliged to rely on the legal obligations incumbent on it as a result of its membership of an international organisation which is not party to the Convention and to which it has transferred part of its sovereignty, in order to justify its actions or omissions arising from such membership *vis-à-vis* the Convention. It also serves to determine in which cases the Court may, in the interests of international cooperation, reduce the intensity of its supervisory role, as conferred on it by Article 19 of the Convention, with regard to observance by the States Parties of their engagements arising from the Convention. It follows from these aims that the Court will accept such an arrangement only where the rights and safeguards it protects are given protection comparable to that afforded by the Court itself. Failing that, the State would escape all international review of the compatibility of its actions with its Convention commitments."

102. In the context of the former "first pillar" of the EU (see *Bosphorus*, cited above, § 72), the Court held that the protection of fundamental rights afforded by the legal system of the European Union was in principle equivalent to that for which the Convention provided. In arriving at that conclusion it found, firstly, that the European Union offered equivalent protection of the substantive guarantees, observing in that connection that at the relevant time respect for fundamental rights had already been a condition of the lawfulness of Community acts and that the CJEU referred extensively to Convention provisions and to Strasbourg case-law in carrying out its assessment (see *Bosphorus*, cited above, § 159). This finding has applied *a fortiori* since 1 December 2009, the date of entry into force of Article 6 (amended) of the Treaty on European Union, which confers on the Charter of Fundamental Rights of the European Union the same value as the Treaties and gives fundamental rights, as guaranteed by the Convention and as they result from the constitutional traditions common to the Member States, the status of general principles of European Union law (see *Michaud*, cited above, § 106).

103. The Court found the substantive protection afforded by EU law to be equivalent taking into account the provisions of Article 52(3) of the Charter of Fundamental Rights, according to which, in so far as the rights contained in the Charter correspond to rights guaranteed by the Convention, their meaning and scope are the same, without prejudice to the possibility for EU law to provide more extensive protection (see *Bosphorus*, cited above, § 80). In examining whether, in the case before it, it can still consider that the protection afforded by EU law is equivalent to that for which the Convention provides, the Court is especially mindful of the importance of compliance with the rule laid down in Article 52(3) of the Charter of

Fundamental Rights given that the entry into force of the Treaty of Lisbon (see paragraph 37 above) conferred on the Charter the same legal value as the Treaties.

104. Secondly, the Court has recognised that the mechanism provided for by European Union law for supervising observance of fundamental rights, in so far as its full potential has been deployed, also affords protection comparable to that for which the Convention provides. On this point, the Court has attached considerable importance to the role and powers of the CJEU, despite the fact that individual access to that court is far more limited than access to the Strasbourg Court under Article 34 of the Convention (see the judgments in *Bosphorus*, §§ 160-65, and *Michaud*, §§ 106-11, both cited above).

(b) Application of the presumption of equivalent protection in the present case

105. The Court reiterates that the application of the presumption of equivalent protection in the legal system of the European Union is subject to two conditions, which it set forth in the *Michaud* judgment, cited above. These are the absence of any margin of manoeuvre on the part of the domestic authorities and the deployment of the full potential of the supervisory mechanism provided for by European Union law (ibid., §§ 113-15). The Court must therefore ascertain whether these two conditions were satisfied in the present case.

106. With regard to the first condition, the Court notes at the outset that the provision to which the Senate of the Supreme Court gave effect was contained in a Regulation, which was directly applicable in the Member States in its entirety, and not in a Directive, which would have been binding on the State with regard to the result to be achieved but would have left it to the State to choose the means and manner of achieving it (see, conversely, *Michaud*, cited above, § 113). As to the precise provision applied in the instant case, namely Article 34(2) of the Brussels I Regulation, the Court notes that it allowed the refusal of recognition or enforcement of a foreign judgment only within very precise limits and subject to certain preconditions, namely that "the defendant [had] not [been] 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 defence, unless the defendant [had] failed to commence proceedings to challenge the judgment when it [had been] possible for him to do so". It is clear from the interpretation given by the CJEU in a fairly extensive body of case-law (see paragraphs 57-61 above) that this provision did not confer any discretion on the court from which the declaration of enforceability was sought. The Court therefore concludes that the Senate of the Latvian Supreme Court did not enjoy any margin of manoeuvre in this case.

107. The present case is therefore distinguishable from that of *M.S.S.*, cited above. In that case, in examining the issue of Belgium's responsibility

under the Convention, the Court noted that, under the terms of the applicable Regulation (the Dublin II Regulation), the Belgian State authorities retained the discretionary power to decide whether or not to make use of the "sovereignty" clause which allowed them to examine the asylum application and to refrain from sending the applicant back to Greece if they considered that the Greek authorities were likely not to fulfil their obligations under the Convention (§§ 339-40). By contrast, Article 34(2) of the Brussels I Regulation did not grant States any such discretionary powers of assessment.

108. In its third-party submissions the AIRE Centre argued that the Senate of the Latvian Supreme Court could and should have had recourse to Article 34(1) of the Brussels I Regulation, according to which the request for a declaration of enforceability had to be refused if "recognition [was] manifestly contrary to public policy in the Member State in which recognition [was] sought". According to the AIRE Centre this provision allowed the Latvian court a degree of discretion (see paragraph 94 above). However, the arguments raised by the applicant before the Supreme Court were confined to the application of paragraph 2 of Article 34. The Court will therefore confine its analysis to the applicant's complaints as raised before the Supreme Court and in the context of the present proceedings. It considers that it is not its task to determine whether another provision of the Brussels I Regulation should have been applied.

109. As regards the second condition, namely the deployment of the full potential of the supervisory mechanism provided for by European Union law, the Court observes at the outset that in the *Bosphorus* judgment, cited above, it recognised that, taken overall, the supervisory mechanisms put in place within the European Union afforded a level of protection equivalent to that for which the Convention mechanism provided (ibid., §§ 160-64). Turning to the specific circumstances of the present case, it notes that the Senate of the Supreme Court did not request a preliminary ruling from the CJEU regarding the interpretation and application of Article 34(2) of the Regulation. However, it considers that this second condition should be applied without excessive formalism and taking into account the specific features of the supervisory mechanism in question. It considers that it would serve no useful purpose to make the implementation of the *Bosphorus* presumption subject to a requirement for the domestic court to request a ruling from the CJEU in all cases without exception, including those cases where no genuine and serious issue arises with regard to the protection of fundamental rights by EU law, or those in which the CJEU has already stated precisely how the applicable provisions of EU law should be interpreted in a manner compatible with fundamental rights.

110. The Court observes that, in a different context, it has held that national courts against whose decisions no judicial remedy exists in national law are obliged to give reasons for refusing to refer a question to the CJEU for a preliminary ruling, in the light of the exceptions provided for by the

case-law of the CJEU. The national courts must therefore state the reasons why they consider it unnecessary to seek a preliminary ruling (see *Ullens de Schooten and Rezabek v. Belgium*, nos. 3989/07 and 38353/07, § 62, 20 September 2011, and *Dhahbi v. Italy*, no. 17120/09, §§ 31-34, 8 April 2014). The Court emphasises that the purpose of the review it conducts in this regard is to ascertain whether the refusal to refer a question for a preliminary ruling constituted in itself a violation of Article 6 § 1 of the Convention; in so doing, it takes into account the approach already established by the case-law of the CJEU. This review therefore differs from that which it conducts when, as in the present case, it examines the decision not to request a preliminary ruling as part of its overall assessment of the degree of protection of fundamental rights afforded by European Union law. The Court carries out this assessment, in line with the case-law established in *Michaud*, in order to determine whether it can apply the presumption of equivalent protection to the decision complained of, a presumption which the Court applies in accordance with conditions which it has itself laid down.

111. The Court thus considers that the question whether the full potential of the supervisory mechanisms provided for by European Union law was deployed – and, more specifically, whether the fact that the domestic court hearing the case did not request a preliminary ruling from the CJEU is apt to preclude the application of the presumption of equivalent protection – should be assessed in the light of the specific circumstances of each case. In the present case it notes that the applicant did not advance any specific argument concerning the interpretation of Article 34(2) of the Brussels I Regulation and its compatibility with fundamental rights such as to warrant a finding that a preliminary ruling should have been requested from the CJEU. This position is confirmed by the fact that the applicant did not submit any request to that effect to the Senate of the Latvian Supreme Court. The present case is thus clearly distinguishable from *Michaud*, cited above, in which the national supreme court refused the applicant's request to seek a preliminary ruling from the CJEU even though the issue of the Convention compatibility of the impugned provision of European Union law had never previously been examined by the CJEU (ibid., § 114). Hence, the fact that the matter was not referred for a preliminary ruling is not a decisive factor in the present case. The second condition for application of the *Bosphorus* presumption should therefore be considered to be satisfied.

112. In view of the foregoing considerations, the Court concludes that the presumption of equivalent protection is applicable in the present case, as the Senate of the Supreme Court did no more than implement Latvia's legal obligations arising out of its membership of the European Union (see, *mutatis mutandis*, *Povse*, cited above, § 78). Accordingly, the Court's task is confined to ascertaining whether the protection of the rights guaranteed by the Convention was manifestly deficient in the present case such that this presumption is rebutted. In that case, the interest of international

cooperation would be outweighed by observance of the Convention as a "constitutional instrument of European public order" in the field of human rights (see *Bosphorus*, § 156, and *Michaud*, § 103, both cited above). In examining this issue the Court must have regard both to Article 34(2) of the Brussels I Regulation as such and to the specific circumstances in which it was implemented in the present case.

3. Allegation that the protection of the rights guaranteed by the Convention was manifestly deficient

(a) General remarks on mutual recognition

113. In general terms, the Court observes that the Brussels I Regulation is based in part on mutual recognition mechanisms which themselves are founded on the principle of mutual trust between the Member States of the European Union. The Preamble to the Brussels I Regulation states that the approach underpinning the Regulation is one of "mutual trust in the administration of justice" within the EU, which implies that "the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation" (see paragraph 54 above). The Court is mindful of the importance of the mutual recognition mechanisms for the construction of the area of freedom, security and justice referred to in Article 67 of the TFEU, and of the mutual trust which they require. As stated in Articles 81(1) and 82(1) of the TFEU, the mutual recognition of judgments is designed in particular to facilitate effective judicial cooperation in civil and criminal matters. The Court has repeatedly asserted its commitment to international and European cooperation (see, among other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, §§ 63 and 72, ECHR 1999-I, and *Bosphorus*, cited above, § 150). Hence, it considers the creation of an area of freedom, security and justice in Europe, and the adoption of the means necessary to achieve it, to be wholly legitimate in principle from the standpoint of the Convention.

114. Nevertheless, the methods used to create that area must not infringe the fundamental rights of the persons affected by the resulting mechanisms, as indeed confirmed by Article 67(1) of the TFEU. However, it is apparent that the aim of effectiveness pursued by some of the methods used results in the review of the observance of fundamental rights being tightly regulated or even limited. Hence, the CJEU stated recently in Opinion 2/13 that "when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that ..., save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU" (see paragraph 49 above). Limiting to exceptional cases 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, in practice, run counter to the requirement imposed by the Convention according to which the court in the State addressed must at least be empowered to conduct a review commensurate with the gravity of any serious allegation of a violation of fundamental rights in the State of origin, in order to ensure that the protection of those rights is not manifestly deficient.

115. Moreover, the Court observes that where the domestic authorities give effect to European Union law and have no discretion in that regard, the presumption of equivalent protection set forth in the *Bosphorus* judgment is applicable. This is the case where the mutual recognition mechanisms require the court to presume that the observance of fundamental rights by another Member State has been sufficient. The domestic court is thus deprived of its discretion in the matter, leading to automatic application of the *Bosphorus* presumption of equivalence. The Court emphasises that this results, paradoxically, in a twofold limitation of the domestic court's review of the observance of fundamental rights, due to the combined effect of the presumption on which mutual recognition is founded and the *Bosphorus* presumption of equivalent protection.

116. In the *Bosphorus* judgment the Court reiterated that the Convention is a "constitutional instrument of European public order" (ibid., § 156). Accordingly, the Court must satisfy itself, where the conditions for application of the presumption of equivalent protection are met (see paragraphs 105-106 above), that the mutual recognition mechanisms do not leave any gap or particular situation which would render the protection of the human rights guaranteed by the Convention manifestly deficient. In doing so it takes into account, in a spirit of complementarity, the manner in which these mechanisms operate and in particular the aim of effectiveness which they pursue. Nevertheless, it must verify that the principle of mutual recognition is not applied automatically and mechanically (see, *mutatis mutandis*, *X v. Latvia* [GC], no. 27853/09, §§ 98 and 107, ECHR 2013) to the detriment of fundamental rights – which, the CJEU has also stressed, must be observed in this context (see, for instance, its judgment in *Alpha Bank Cyprus Ltd*, cited at paragraph 48 above). In this spirit, where the courts of a State which is both a Contracting Party to the Convention and a Member State of the European Union are called upon to apply a mutual recognition mechanism established by EU law, they must give full effect to that mechanism where the protection of Convention rights cannot be considered manifestly deficient. However, if a serious and substantiated complaint is raised before them to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by European Union law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law.

(b) Whether the protection of fundamental rights was manifestly deficient in the present case

117. The Court must now seek to ascertain whether the protection of fundamental rights afforded by the Senate of the Latvian Supreme Court was manifestly deficient in the present case such that the presumption of equivalent protection is rebutted, as regards both the provision of European Union law that was applied and its implementation in the specific case of the applicant.

118. The Court considers that the requirement to exhaust remedies arising from the mechanism provided for by Article 34(2) of the Brussels I Regulation as interpreted by the CJEU (the defendant must have made use of any remedies available in the State of origin in order to be able to complain of a failure to serve him with the document instituting the proceedings), is not in itself problematic in terms of the guarantees of Article 6 § 1 of the Convention. This is a precondition which pursues the aim of ensuring the proper administration of justice in a spirit of procedural economy and which is based on an approach similar to that underpinning the rule of exhaustion of domestic remedies set forth in Article 35 § 1 of the Convention. This approach comprises two strands. Firstly, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system and, secondly, it is presumed that there is an effective remedy available in the domestic system in respect of the alleged breach (see, *mutatis mutandis*, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV, and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 115, ECHR 2015). Hence, the Court sees no indication that the protection afforded was manifestly deficient in this regard.

119. However, the Court emphasises that the adversarial principle and the principle of equality of arms, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention. They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent or opponents (see, for example, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 56, ECHR 2004-III). These principles, which cover all aspects of procedural law in the Contracting States, are also applicable in the specific sphere of service of judicial documents on the parties (see *Miholapa v. Latvia*, no. 61655/00, § 23, 31 May 2007, and *Övüş v. Turkey*, no. 42981/04, § 47, 13 October 2009), although Article 6 § 1 cannot be interpreted as prescribing a specific form of service of documents (see the decision in *Orams*, cited above).

120. Turning to the present case the Court notes that the applicant maintained, in particular, before the Latvian courts that he had not been duly

notified in good time of the summons to appear before the Limassol District Court and the request by the company F.H. Ltd., with the result that he had been unable to arrange for his defence. He therefore argued that recognition of the impugned judgment should have been refused under Article 34(2) of the Brussels I Regulation. The applicant contended that the summons had been sent to an address where it had been physically impossible to reach him, even though the Cypriot and Latvian lawyers representing the claimant company had been perfectly aware of his business address in Riga and could easily have obtained his private address (see paragraph 30 above). He therefore raised cogent arguments in the Latvian courts alleging the existence of a procedural defect which, *a priori*, was contrary to Article 6 § 1 of the Convention and precluded the enforcement of the Cypriot judgment in Latvia.

121. In the light of the general principles reiterated above, the Court notes that, in the proceedings before the Senate of the Supreme Court, the applicant complained that he had not received any summons or been notified of the Cypriot judgment. In so doing he relied on the grounds for non-recognition provided for by Article 34(2) of the Brussels I Regulation. That provision states expressly that such grounds may be invoked only on condition that proceedings have previously been commenced to challenge the judgment in question, in so far as it was possible to do so. The fact that the applicant relied on that Article without having challenged the judgment as required necessarily raised the question of the availability of that legal remedy in Cyprus in the circumstances of the present case. In such a situation the Senate was not entitled simply to criticise the applicant, as it did in its judgment of 31 January 2007, for not appealing against the judgment concerned, and to remain silent on the issue of the burden of proof with regard to the existence and availability of a remedy in the State of origin; Article 6 § 1 of the Convention, like Article 34(2) *in fine* of the Brussels I Regulation, required it to verify that this condition was satisfied, in the absence of which it could not refuse to examine the applicant's complaint. The Court considers that the determination of the burden of proof, which, as the European Commission stressed (see paragraph 92 above), is not governed by European Union law, was therefore decisive in the present case. Hence, that point should have been examined in adversarial proceedings leading to reasoned findings. However, the Supreme Court tacitly presumed either that the burden of proof lay with the defendant or that such a remedy had in fact been available to the applicant. This approach, which reflects a literal and automatic application of Article 34(2) of the Brussels I Regulation, could in theory lead to a finding that the protection afforded was manifestly deficient such that the presumption of equivalent protection of the rights of the defence guaranteed by Article 6 § 1 is rebutted. Nevertheless, in the specific circumstances of the present application the Court does not consider this to be the case, although this shortcoming is regrettable.

122. It is clear, in fact, from the information provided by the Cypriot Government at the Grand Chamber's request, and not disputed by the parties, that Cypriot law afforded the applicant, after he had learned of the existence of the judgment, a perfectly realistic opportunity of appealing despite the length of time that had elapsed since the judgment had been given. In accordance with Cypriot legislation and case-law, where a defendant against whom a judgment has been given in default applies to have that judgment set aside and alleges, on arguable grounds, that he or she was not duly summoned before the court which gave judgment, the court hearing the application is required – and not merely empowered – to set aside the judgment given in default (see paragraph 68 above). Accordingly, the Court is not convinced by the applicant's argument that such a procedure would have been bound to fail. The Court has consistently held that if there is any doubt as to whether a given remedy offers a real chance of success, that point must be submitted to the domestic courts (see, for example, *Akdivar and Others*, cited above, § 71, and *Naydenov v. Bulgaria*, no. 17353/03, § 50, 26 November 2009). In the instant case the Court considers that, in the period between 16 June 2006 (the date on which he was given access to the entire case file at the premises of the first-instance court and was able to acquaint himself with the content of the Cypriot judgment) and 31 January 2007 (the date of the hearing of the Senate of the Supreme Court), the applicant had sufficient time to pursue a remedy in the Cypriot courts. However, for reasons known only to himself, he made no attempt to do so.

123. The fact that the Cypriot judgment made no reference to the available remedies does not affect the Court's findings. It is true that section 230(1) of the Latvian Civil Procedure Law requires the courts to indicate in the text of their decisions the detailed arrangements and time-limits for appealing against them (see paragraph 67 above). However, while such a requirement is laudable in so far as it affords an additional safeguard which facilitates the exercise of litigants' rights, its existence cannot be inferred from Article 6 § 1 of the Convention (see *Société Guérin Automobiles v. the 15 States of the European Union* (dec.), no. 51717/99, 4 July 2000). It was therefore up to the applicant himself, if need be with appropriate advice, to enquire as to the remedies available in Cyprus after he became aware of the judgment in question.

124. On this point the Court shares the view of the respondent Government that the applicant, who was an investment consultant, should have been aware of the legal consequences of the acknowledgment of debt deed which he had signed. That deed was governed by Cypriot law, concerned a sum of money borrowed by the applicant from a Cypriot company and contained a clause conferring jurisdiction on the Cypriot courts. Accordingly, the applicant should have ensured that he was familiar with the manner in which possible proceedings would be conducted before the Cypriot courts (see, *mutatis mutandis*, *Robba v. Germany*, no. 20999/92,

Commission decision of 28 February 1996, unpublished). Having omitted to obtain information on the subject he contributed to a large extent, as a result of his inaction and lack of diligence, to bringing about the situation of which he complained before the Court and which he could have prevented so as to avoid incurring any damage (see, *mutatis mutandis*, *Hussin v. Belgium* (dec.), no. 70807/01, 6 May 2004, and *McDonald,* cited above).

125. Hence, in the specific circumstances of the present case, the Court does not consider that the protection of fundamental rights was manifestly deficient such that the presumption of equivalent protection is rebutted.

126. Lastly, as regards the applicant's other complaints under Article 6 § 1, and in so far as it has jurisdiction to rule on them, the Court finds no appearance of a violation of the rights secured under that provision.

127. Accordingly, there has been no violation of Article 6 § 1.

FOR THESE REASONS, THE COURT

Holds, by sixteen votes to one, that there has been no violation of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 May 2016.

Johan Callewaert	András Sajó
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint concurring opinion of Judges Lemmens and Briede;

(b) Dissenting opinion of Judge Sajó.

A.S.
J.C.

JOINT CONCURRING OPINION OF JUDGES LEMMENS AND BRIEDE

1. We concur with the majority that Article 6 § 1 of the Convention is applicable in the present case, but has not been violated.

To our regret, however, we are unable to follow the reasoning of the majority on all points. The majority basically find that there was a shortcoming in the proceedings before the Supreme Court of Latvia (see paragraphs 119-21 of the judgment) but that in the specific circumstances of the case there was no manifest deficiency in the protection of fundamental rights; for that reason, they apply the presumption of equivalent protection known as the Bosphorus presumption (see paragraphs 122-25).

We respectfully disagree with the premise that there was a shortcoming in the proceedings before the Supreme Court.

2. Article 33 of the Brussels I Regulation lays down the principle that a judgment given in a Member State of the European Union shall be recognised in the other Member States. Article 34 allows for exceptions to the principle, enumerating two situations in which a judgment shall not be recognised. The applicant relied on the exception provided for in Article 34(2) (see paragraph 30 of the judgment). He argued that the Limassol judgment was given in default of appearance, and that he had not been served with the document instituting the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence. There was one obstacle in the way of the applicant: he would not be able to rely on the exception under Article 34(2) if he had "failed to commence proceedings (in Cyprus) to challenge the judgment when it was possible for him to do so" (Article 34(2), *in fine*). The question of exhaustion of remedies in Cyprus was thus decisive for the decision on this argument of the applicant. We note that nowhere it is said in our judgment that the applicant argued that it had not been possible for him to challenge the Limassol judgment once he became aware of its existence (see in particular paragraphs 30 and 32).

It is important to note that the applicant also invoked another provision of the Brussels I Regulation, namely Article 38(1) (see paragraph 31 of the judgment). According to that provision, a judgment given in a Member State "and enforceable in that State" shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. The applicant argued, among other things, that "the claimant company had not produced any documentary evidence demonstrating that the judgment of 24 May 2004 was enforceable in

Cyprus” (ibid.). The question whether the Limassol judgment was enforceable in Cyprus was thus decisive for the decision on the second argument of the applicant.

The Supreme Court of Latvia quashed the judgment of the Regional Court and ordered the recognition and enforcement of the Limassol judgment. We attach particular importance to the way in which the Supreme Court dealt with the two arguments of the applicant. It held, on the basis of the evidence in the case file, that the Limassol judgment “became final”. It further held that this fact was confirmed by the explanations of both parties, according to which no appeal had been lodged against that judgment. In our opinion, these findings contained an answer to both arguments of the applicant: since the judgment was final, it was enforceable, and therefore the argument based on Article 38(1) of the Brussels I Regulation was rejected; moreover, the applicant had not challenged the judgment, and therefore the argument based on Article 34(2) of the Brussels I Regulation was rejected. The latter finding also explains why the Supreme Court considered that the question of the due notification of the examination of the case by the Limassol court “lack[ed] relevance”.

3. The majority find that the Supreme Court should have explicitly examined, in adversarial proceedings, the issue of the burden of proof with respect to the existence and availability of a remedy against the Limassol judgment (see paragraph 121 of the judgment).

In our opinion, in the circumstances of the present case Article 6 § 1 of the Convention did not require the explicit examination of the burden of proof issue. The Supreme Court proceedings, including those relating to the burden of proof and the reasoning of its judgments, are regulated by Latvian law. It was for the Supreme Court to deal with the applicant’s argument according to the rules of domestic law. The applicant presented his arguments to the Supreme Court during an adversarial hearing, and the Supreme Court replied to these arguments in its judgment. Moreover, the applicant did not even dispute the fact that remedies were available in Cyprus; on the contrary, he based his argument relating to Article 38(1) of the Brussels I Regulation on the very fact that the Limassol judgment was not yet enforceable, which could be understood by the Supreme Court as an admission that it was still possible to challenge that judgment. In any event, the Supreme Court implicitly considered that a remedy was indeed available, and explicitly noted that the applicant had not made use of it.

If the applicant wanted to argue that no remedy had in fact been available to him in Cyprus, in our opinion it would have been for him to raise this issue explicitly before the Supreme Court. We question whether he could

expect the Supreme Court to raise that issue of its own motion. And we definitely consider that he cannot complain under Article 6 § 1 of the Convention about the lack of an explicit response to an argument that was not explicitly made.

4. On the basis of the reasoning developed above, we conclude that the trial before the Supreme Court complied with the adversarial principle and the principle of equality of arms, and that Article 6 § 1 has therefore not been violated.

5. Having arrived at that conclusion, we obviously do not have to examine exactly which remedies were available under Cypriot law (see paragraph 122 of the judgment).

We find it remarkable that the majority, in order to "save" the respondent State from a finding that the Convention has been violated, adopt a reasoning based on an interpretation of Cypriot law, thereby relying on the information provided by the Cypriot Government. It is in principle not for the Court to interpret domestic law. Here, the majority interpret provisions of the domestic law of a third State, which, moreover, do not seem to have been the subject of adversarial debate before the domestic courts of the respondent State.

6. Finally, since we find that there was no shortcoming in the proceedings before the Supreme Court of Latvia, we are of the opinion that it was not necessary to have recourse to the *Bosphorus* principle.

When the Court applies the *Bosphorus* presumption, it in fact reduces the intensity of its supervisory role, in the interests of international cooperation (see *Michaud v. France*, no. 12323/11, § 104, ECHR 2012). It should not do so where the interests of international cooperation are not at stake.

The application of the principle is therefore, in our opinion, relevant only if the case at hand involves the implementation of European Union law and if there has been a shortcoming in the relevant proceedings. The question then arises whether the deficiency in the protection of fundamental rights is so manifest that the presumption in favour of the respondent State is rebutted. In the present case, however, after what we consider to be an exercise of the scrutiny "normally" exercised by the Court, we find that there was no deficiency in the proceedings before the Supreme Court of Latvia.

The application can therefore be dismissed, in our opinion, without any need to base our reasoning on the *Bosphorus* principle.

DISSENTING OPINION OF JUDGE SAJÓ

1. Regretfully, I cannot share the views of the majority in this case.

2. The Limassol District Court ordered the applicant to pay a certain sum on 24 May 2004. That judgment was made in proceedings in which the summons had been served on the applicant (the defendant in the domestic proceedings) at the wrong address. He could not therefore have been aware of the proceedings. The claimant in the case requested execution of the Cypriot judgment in Latvia. It was in the course of those domestic proceedings that the applicant first learned of the existence of the Cypriot judgment. While the Regional Court quashed the impugned order of enforcement, the Supreme Court of Latvia ordered the recognition and enforcement of the Cypriot judgment. It is quite striking that the required certificate, dated 18 January 2007 (i.e. issued two years after the execution request had been submitted to the court in Latvia), was submitted only in the appeal to the Supreme Court and that it was accepted at that stage of the proceedings. However, the case is about more fundamental issues of fairness. It also raises issues of the treatment of EU law in this Court. These are the issues where I beg to differ.

3. The Court does not deny "that a decision to enforce a foreign judgment cannot be regarded as compatible with the requirements of Article 6 § 1 of the Convention if it was taken without the unsuccessful party having been afforded any opportunity of effectively asserting a complaint as to the unfairness of the proceedings leading to that judgment, either in the State of origin or in the State addressed" (see paragraph 98).

4. However, in the Court's reasoning:

a) There was no discretion granted to the domestic courts to review this issue because the matter had to be determined under the Brussels I Regulation, which, according to the interpretation given by the CJEU (at least as understood by the Court), does not grant any discretionary power of assessment.

b) However, such preclusion of a review of the fairness of the domestic proceedings in the context of the enforceability of the Cypriot judgment does not raise an issue because the very legal system that precludes it is to be considered as providing sufficient protection. Where the lack of proper protection originates from EU law there is, at least prima facie, no lack of proper protection as "the supervisory mechanisms put in place within the European Union afforded a level of protection equivalent to that for which

the Convention mechanism provided" (see paragraph 109 with reference to *Bosphorus*).

c) This case is about the (mutual) recognition of (foreign) judgments.

d) In the context of the mechanism of mutual recognition of judgments within the EU, the *Bosphorus* presumption of equivalent protection applies to the effect that only manifestly deficient regard for the Convention rights will raise an issue under the Convention.

e) Such manifest deficiency did not occur, although the Senate of the Supreme Court of Latvia did not examine the issue of the availability of a remedy in the State of origin,

f) According to the Cypriot Government, "and not disputed by the parties", there was a "perfectly realistic opportunity of appealing" in Cyprus.

5. If, however, the factual assumption under point f) is correct, the case should have been declared inadmissible and it would not have been necessary to rely on *Bosphorus* and manifest deficiency. Moreover, as the Court itself has stated, the parties (and the Court) have to rely – in the proceedings before the European Court of Human Rights – on what the national courts took into consideration. According to the judgment of the Senate of the Latvian Supreme Court, "the Limassol District Court judgment became final" because, among other reasons, no appeal had been lodged against it. (This cannot be attributed to the applicant). However, it is exactly the impossibility of making such an appeal that is at the origin of the lack of procedural fairness: without proper service in the proceedings there was no possibility to appeal. I do not see at which point the applicant could have raised the issue of the possibility of appeal in Cyprus in the domestic proceedings: this lack of opportunity was accepted by all parties and the domestic courts, and the only point of dispute was whether such a judgment rendered in violation of the requirements of fair proceedings could be enforced or not. However, the judgment of the Senate of the Latvian Supreme Court and the Court blame the applicant, although the execution proceedings were already under way and the issue was only whether a judgment rendered in disregard of the requirement of a hearing could be enforced.

6. The Court itself is aware of the inadequacy of the Latvian proceedings, and it has found that the Latvian domestic court did not discuss the availability of an appeal in Cyprus, at least as far as the burden of proof regarding the existence of such possibility was concerned, in adversarial proceedings leading to reasoned findings. However, according to the judgment, this shortcoming did not reach the level of a manifest deficiency. That is the applicable threshold in situations of presumed equivalent protection in matters of mutual recognition. It is because of this minimal

scrutiny that the Court could be satisfied that there was no violation as, given that he allegedly did not appeal in Cyprus, the "regrettable Latvian shortcomings" do not amount to such a blatant violation.

7. At this point I have to voice my reservations regarding the *Bosphorus* principle, and in particular its application to Regulations, which arguably do not allow a discretion for considerations emerging under the Convention.[1] The standard justification given for the *Bosphorus* principle, as applied by the Court in the above circumstances, is that the EU legal system already takes into consideration the Convention values and rights and it provides protection to these thanks to the CJEU. It is indeed reasonable to assume that where States transfer their sovereignty to an international organisation that recognises the fundamental rights of the Convention, as provided for in the directly applicable Charter of Fundamental Rights (Art. 52 (3)), the rights will be protected. There is, indeed, a legal mechanism (the CJEU) that is there to ensure that these rights are actually protected.

8. Moreover, there is an additional justification offered for the manifest deficiency test as applied in the mutual trust/recognition context: it is argued that it serves the interest of international cooperation. However, even assuming, for the sake of argument, that the EU system provides equivalent protection in terms of its substantive law and also procedurally, through the CJEU, one should not sacrifice Convention rights for the sake of international cooperation, a consideration that is not recognised among the Convention grounds for limitation of rights. I can see good practical reasons for applying presumptions in favour of Convention conformity of standards of review within a regional international organisation like the EU which expressly recognises Convention rights (at least since the applicability of the Charter). Comity requires a certain respect in this regard. But the requirement of respect for human rights in the legal sources of the EU does not make the role of this Court fundamentally different from its supervisory role *vis-à-vis* national constitutional systems. After all, Convention rights are, as a rule, guaranteed by the respective constitutions and the national judiciary. Moreover, in the present case the CJEU had no opportunity to provide the expected human-rights protection. While it is true that Member States of the EU may, under EU law, be required to respect Convention rights, and therefore courts in other States may assume that this obligation was observed, there is nothing that automatically guarantees that the first State did indeed satisfy that obligation, and therefore the second State, trusting the first one, cannot be said to be exempt from responsibility. Even if they are exempted from undertaking an in-depth examination of their own

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[1] In the European Commission's view (as presented in the third-party observations), the mechanism of the Brussels I Regulation did provide for an effective review of the right to a fair hearing in the form of the public-policy exception.

motion, they should nonetheless carry out a review to the extent necessary for the effective protection of rights and where the applicant makes a prima facie case that human rights were disregarded in the first country. Otherwise, a system not amenable to Convention review will be created. It is regrettable that the Latvian Supreme Court did not enable the EU system to review the allegation. This Court shall continue to assess whether State acts, whatever their origin, are compliant with the Convention, while the States are and will remain responsible for fulfilling their Convention obligations.

9. In my view, it does not serve the protection of human rights to extend the *Bosphorus* principle to situations where the national courts allegedly have no discretion to consider Convention rights.[2] There is also some inconsistency here; at least I do not see comparable assumptions of equivalent protection in matters of application of the UN Charter, even where the Security Council has exclusive jurisdiction. Lastly, the extension of the *Bosphorus* principle to matters of mutual recognition (a matter certainly not limited to the Brussels Regulation on enforcement of judgments) seems to generate a presumption unsustained by the realities of life even according to the CJEU, as became clear most recently in C-404/15 and C-659/15 PPU. This Court shall remain faithful to its position adopted in *M.S.S.* (for the execution of foreign judgments in an Article 6 context see *Pellegrini v. Italy*, no. 30882/96, ECHR 2001-VIII; see further *X v. Latvia* [GC], no. 27853/09 ECHR 2013.)

[2] In this regard I find the Commission's position more convincing, but this Court is not called upon to determine the position under European Union law any more than the position under national law, so I cannot rely on those considerations.