

German Law Journal: 'Does Investor-State Dispute Settlement Discriminate Against Nationals?'

From the Commission's view, the whole purpose of the investment court system (ICS) in the EU-Canada trade deal (CETA) is to allow Canadian businesses to sue the EU and its member states when they 'lose' future unearned profits as a result of having to obey new "legitimate" regulations, laws and licencing decisions.

When a national of the EU sues inside the EU, in such circumstances, they will no doubt receive adequate compensation for their out of pocket expenses in plant, machinery, marketing, administration, etc, etc, but what they will not get off a judge in the EU, is a ruling dictating that the state must pay the EU-national investor all their 'lost' future unearned profit which the investor 'forgoes' as a result of abiding by a state law, regulation or licencing decision.

It is thus important to consider this sentence from [this academic paper](#) published in the German Law Review:

"Depending on the national legal order, investor-state adjudication may not even be discriminatory in cases in which domestic law provides national investors with equivalent legal protection."

The point here surely is, that while a Canadian investor could be awarded all their unearned 'lost' future profits by an arbitrator called on to adjudicate at the investment court of the CETA, in a case with the same circumstances taken by a national in the national or EU courts, the ruling would be different.

The full paper: 'Does Investor-State Dispute Settlement Discriminate Against Nationals?', Published online by Cambridge University Press: 10 February 2020, is available a here: <https://www.cambridge.org/core/journals/german-law-journal/article/does-investorstate-dispute-settlement-discriminate-against-nationals/10333482B31A23B7D11812E9AAF3DC7D>