

# Institutional aspects of accession by the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms

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The European Parliament adopted a resolution on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The resolution recalls that as a result of acceding to the ECHR, the Union will be integrated into its fundamental rights protection system and, in addition to the internal protection of these rights by the case law of the Court of Justice of the European Union, will have the benefit of an external protection body which is international in character.

The resolution highlights the **main arguments in favour of accession of the Union to the ECHR**, which may be summarised as follows:

- accession constitutes a move forward in the process of European integration and involves one further step towards political Union while the Union's system for the protection of fundamental rights will be supplemented and enhanced by the incorporation of the Charter of Fundamental Rights into its primary law, its accession to the ECHR will send a strong signal concerning the coherence between the Union and the countries belonging to the Council of Europe and its pan-European human rights system; this accession will also enhance the credibility of the Union in the eyes of third countries which it regularly calls upon in its bilateral reports to respect the ECHR;
- accession to the ECHR will afford citizens protection against the action of the Union similar to that which they already enjoy against action by all the Member States. This is all the more relevant because the Member States have transferred substantial powers to the Union;
- legislative and case law harmonisation in the field of human rights of the rule of law of the EU and the ECHR will contribute to the harmonious development of the two European courts in the field of human rights, particularly because of the increased need for dialogue and cooperation, and thus will create an integral system, in which the two courts will function in synchrony;
- accession will also compensate to some extent for the fact that the scope of the Court of Justice of the European Union is somewhat constrained in the matters of foreign and security policy and police and security policy by providing useful external judicial supervision of all EU activities;
- accession will not in any way call into question the principle of the **autonomy of the Union's law**, as the Court of Justice of the European Union will remain the sole supreme court adjudicating on issues relating to EU law and the validity of the Union's acts, as the European Court of Human Rights must be regarded not only as a superior authority but rather as a specialised court exercising external supervision over the Union's compliance with obligations under international law arising from its accession to the ECHR (the relationship between the two European courts shall not be hierarchical but rather a relationship of specialisation). The Court of Justice of the European Union will have a status analogous to that currently enjoyed by the supreme courts of the Member States in relation to the ECHR.

Parliament recalls that accession does not entail any extension of the powers of the Union and in particular does not create a general human rights competence for the Union, and that the Member States' traditions

and constitutional identities must be respected. It also notes that the agreement on the accession of the Union to the ECHR must ensure that accession will not affect the particular internal situation of the Member States in relation to the ECHR and its protocols in general and with regard to any derogations and reservations made by Member States in particular, and that such circumstances should not influence the position taken by the Union in relation to the ECHR. In addition, it observes that the ECHR system has been supplemented by a series of additional protocols concerning the protection of rights which are not covered by the ECHR and recommends that the Commission be mandated also to negotiate accession to all the protocols concerning rights corresponding to the Charter of Fundamental Rights, regardless of whether they have been ratified by the Member States of the Union.

Parliament stresses that **accession to the ECHR does not make the Union a member of the Council of Europe** but that a degree of participation by the Union in the ECHR bodies is necessary in order to ensure proper integration of the Union into the ECHR system and that, therefore, the Union should have certain rights in this domain, particularly: (i) the right to submit a list of three candidates for the post of judge, one of whom is elected by the Parliamentary Assembly of the Council of Europe on behalf of the Union and participates in the work of the Court on a footing of equality with the other judges; (ii) the European Parliament being involved either in drawing up the list of candidates in line with a procedure similar to that provided for in Article 255 of the TFEU for candidates for the position of judge at the Court of Justice of the European Union; (iii) the right to attend via the European Commission, with voting rights on behalf of the EU, meetings of the Committee of Ministers when it performs its task of monitoring the execution of judgments given by the ECHR; (iv) the right of the European Parliament to appoint/send a certain number of representatives to the Parliamentary Assembly of the Council of Europe when the latter elects judges to the ECHR.

**Principal added value of the accession of the EU to the ECHR:** Parliament considers that this lies in recourse for individuals against acts by means of which the law of the Union is implemented by its institutions or the Member States and that consequently any application by a natural or legal person concerning an act or failure to act by an institution or body of the Union should be directed solely against the latter and that similarly any application concerning a measure by means of which a Member State implements the law of the Union should be directed solely against the Member State, without prejudice to the principle that, where there might be any doubt about the way in which responsibility is shared, an application may be brought simultaneously against the Union and the Member State. Overall, Members stress that, following the accession, the ECHR will constitute the minimum standard of protection for human rights and fundamental freedoms in Europe and will be crucial, in particular, in cases where the protection granted by the EU is inferior to that provided under the ECHR.

**Extra-territorial applicability of the ECHR:** Parliament considers that, as the European Court of Human Rights has acknowledged the extra-territorial applicability of the ECHR, the Union must aim to respect this obligation fully in its external relations and activities. It underlines that, after the accession, the competence of the European Court of Human Rights when judging matters coming under the ECHR may not be contested on the basis of the internal structure of EU law. It underlines also that the competence of the European Court of Human Rights must not be limited to European citizens or to the geographical area of the European Union (for example in the case of missions or delegations). It recalls that promotion of respect of human rights, a core value of the EU as enshrined in its founding treaty, constitutes common ground for its relations with third countries.

Parliament considers that it would be **unwise to formalise relations between the Court of Justice of the European Union and the European Court of Human Rights** by establishing a preliminary ruling procedure before the latter or by creating a body or panel which would take decisions when one of the two courts intended to adopt an interpretation of the ECHR which differed from that adopted by the other. Members take the view, therefore, that accession will further enhance the confidence of citizens in the

European Union and the EU's credibility in talks on human rights with non-member States. They stress, furthermore, that the uniform and full application of the Charter of Fundamental Rights at EU level is equally essential to ensure the Union's credibility in this dialogue.

**An additional defence mechanism:** Parliament notes that EU accession to the ECHR will provide an additional mechanism for enforcing human rights, namely the **possibility of lodging a complaint with the European Court of Human Rights in relation to an act, or a failure to act, by an EU institution or a Member State implementing EU law** and falling within the remit of the ECHR. They stress, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union nor that of the European Court of Human Rights, and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the admissibility of any application. It calls for applications and complaints to be dealt with in a reasonable period of time.

**Workload:** aware of the fact that accession as such will not resolve the extremely serious problems facing the ECHR system, namely on the one hand the excessive workload due to an exponential increase in the number of individual requests and on the other hand the reform of the structure and functioning of the Court to cope with it, Members note that, in the interests of seeking justice, preference should be given to accession arrangements that will have the least impact on the workload of the European Court of Human Rights.

**Accession procedure:** Parliament draws attention to the fact that, in view of the constitutional importance of accession by the Union to the ECHR, the Treaty on the Functioning of the European Union lays down stringent conditions for this, the Council being required to adopt the decision concluding the agreement unanimously after approval has been given by the European Parliament, and the agreement entering into force only after its approval by the Member States in accordance with their respective constitutional rules.

**Strengthening cooperation:** the accession will require enhanced cooperation between national courts, the Court of Justice of the European Union and the European Court of Human Rights in protecting fundamental rights. Cooperation between the institutions of the European Union and the specialised bodies of the Council of Europe should be strengthened. Parliament points out that cooperation between the two European courts will further the development of a coherent case-law system in the field of human rights.

**Raising awareness:** Parliament suggests that, in order to raise awareness of the added value of the accession to citizens, the Council of Europe and the EU should develop guidelines with clear explanations of all the implications and effects of accession. The Commission and Member States should provide EU citizens with information ensuring that they are fully aware of what the additional mechanism means and how to use it adequately.

**Parliament's implication:** Parliament stresses that, as accession to the ECHR affects not only the EU institutions, but also the Union's citizens, the European Parliament must be consulted and involved throughout the negotiation process, and must be associated and immediately and fully informed at all stages of the negotiations.