



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Constitutional Affairs

2009/2241(INI)

2.2.2010

DRAFT REPORT

on the institutional aspects of the accession of the European Union to the
European Convention for the Protection of Human Rights and Fundamental
Freedoms
(2009/2241(INI))

Committee on Constitutional Affairs

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MOTION FOR A EUROPEAN PARLIAMENT 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 (2009/2241(INI))

The European Parliament,

- having regard to Article 6(2) of the Treaty on European Union, Article 218(6) of the Treaty on the Functioning of the European Union and the Protocol on Article 6(2) of the Treaty on European Union concerning the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms,
 - having regard to the decision of the Conference of Presidents of 14 January 2010,
 - having regard to Rules 48 and 50 of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Foreign Affairs and the Committee on Petitions (A7-0000/2010),
- A. whereas, in case law which has remained consistent since the 1970s, the Court of Justice has held that fundamental rights form an integral part of the general legal principles which the Court enforces,
- B. whereas in so doing the Court draws its inspiration from the constitutional traditions common to the Member States and from international instruments concerning the protection of human rights to which the Member States have acceded, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as the ECHR),
- C. whereas the essence of this case law was incorporated into primary law by the Maastricht Treaty on European Union of 1993,
- D. whereas the Court of Justice devotes particular attention to the development of the case law of the European Court of Human Rights, as demonstrated by the growing number of judgments which refer to provisions of the ECHR,
- E. whereas in principle the European Court of Human Rights makes a 'presumption of compatibility' of the conduct of a Member State of the Union with the ECHR when the State is merely implementing Community law,
- F. whereas, in an opinion of 28 March 1996, the Court of Justice found that the European Community did not have the capacity to accede to the ECHR without a prior amendment to the Treaty,
- G. whereas Article 6(2) of the Treaty on European Union provides that the European Union shall accede to the ECHR and whereas Protocol No 8 to the Lisbon Treaty lists a series of points which need to be settled at the time of that accession; whereas these provisions do not merely constitute an option allowing the Union to accede but require the Union

institutions to act accordingly,

- H. whereas, due to the conclusion of Protocol No 14 amending the ECHR, it is now possible for the Union to accede on behalf of the signatory states to the ECHR and whereas the accession terms and conditions must be agreed at the time of accession between the Union, of the one part, and the signatory states to the ECHR of the other part,
- I. whereas such an agreement should also deal with administrative and technical issues, such as the principle of a contribution from the Union to the ordinary budget of the Council of Europe intended for the functioning of the European Court of Human Rights, the details of which remain to be agreed with the Council of Europe,
- J. whereas, 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, will have the benefit of an external protection body which is international in character,
1. Stresses the main arguments in favour of accession of the Union to the ECHR, which may be summarised as follows:
- 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 'wider Europe', constituted by 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 relationships 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,
 - accession will contribute to the harmonious development of the case law of the two European courts in the field of human rights, particularly because of the increased need for dialogue,
 - accession will not in any way call into question the principle of the autonomy of Union law, as the Court of Justice will remain the sole supreme court adjudicating on issues relating to EU law and the validity of the Union's acts, as the Court of Human Rights must be regarded not as a higher court but rather as having special jurisdiction in exercising external supervision over the Union's compliance with obligations under international law arising from its accession to the ECHR; thus the Court of Justice will have a status analogous to that currently enjoyed by the supreme courts of the Member States in relation to the Court of Human Rights;
2. Recalls that, pursuant to the Treaty, 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;

3. Notes that, pursuant to Article 2 of Protocol No 8 to the Lisbon Treaty, the agreement on the accession of the Union to the ECHR must not affect the particular 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 have no effect on the legal position of the Union in relation to the ECHR;
4. 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 suggests that the Union should accede to all the protocols which at least partially concern matters where the Union possesses powers (Nos 1, 4, 7 and 12);
5. 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 bodies associated with the Convention is necessary in order to ensure proper integration of the Union into the Convention system and that, therefore, the Union should have certain rights in this domain, particularly:
 - 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 an equal footing with the other judges,
 - the right to attend, and vote at meetings of the Committee of Ministers when it performs its task of monitoring the execution of judgments given by the European Court of Human Rights or when it decides on the desirability of seeking an opinion from the Court and the right to be represented on the Steering Committee for Human Rights (a subsidiary body of the Committee of Ministers),
 - 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 European Court of Human Rights;
6. Is of the opinion that the Member States should not, with respect to each other and in their mutual relations with the Union, be entitled to bring interstate applications concerning an alleged breach of the provisions of Article 33 of the ECHR, as this would be contrary to the spirit of certain commitments arising from the Lisbon Treaty;
7. Considers that any application by a citizen of the Union 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, in instances where the division of responsibility between the Union and a Member State for a particular act is not clearly defined, an application may be brought simultaneously against the Union and the Member State;
8. Considers it appropriate that, in the interests of the proper administration of justice, in any case brought against a Member State before the European Court of Human Rights which may raise an issue concerning the law of the Union, the Union may, after being authorised by the Court, be permitted to appear as a defendant in the case, and that in any case

brought against the Union any Member State may, after being authorised by the Court, be permitted to appear as a defendant in the case;

9. Considers that it would be unwise to formalise relations between the Court of Justice 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; recalls in this context Declaration No 2 concerning Article 6(2) of the Treaty on European Union, which notes the existence of a regular dialogue between the Court of Justice and the European Court of Human Rights, which should be reinforced when the Union accedes to the ECHR;
10. Notes that the ECHR has an important function in connection with the interpretation of the Charter of Fundamental Rights, as rights guaranteed by the Charter which correspond to rights recognised by the ECHR must be interpreted in accordance with the Convention and as, by virtue of Article 6(3) of the Treaty on European Union, the ECHR constitutes a source of inspiration for the Court of Justice in the formulation of general principles of Union law; notes likewise that, pursuant to Article 53 of the ECHR, the Convention cannot be interpreted as limiting or adversely affecting the rights recognised by the Charter of Fundamental Rights, so that the latter retains its full legal force;
11. Is aware 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 applications and on the other hand the reform of the structure and functioning of the Court to cope with it; notes that, in the absence of a solution to these problems, the system is in danger of collapse and that the entry into force of Protocol No 14, which has so far been delayed by the non-ratification of one signatory state, will certainly help to reduce the number of uncompleted procedures but will not eliminate them;
12. 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;
13. Notes that accession by the Union to the ECHR constitutes an essential step which should subsequently be complemented by accession by the Union to the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996, which would be consistent with the progress already enshrined in the Charter of Fundamental Rights and in the social legislation of the Union;
14. Instructs its President to forward this resolution to the Council and the Commission.