



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2009/2241(INI)

29.3.2010

AMENDMENTS

1 - 29

Draft opinion
Kinga Gál
(PE439.414v01-00)

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

AM_Com_NonLegOpinion

Amendment 1
Marie-Christine Vergiat

Draft opinion
Paragraph 1

Draft opinion

1. **Welcomes the important achievement represented by** the Treaty of Lisbon, **whereby** the Charter of Fundamental Rights of the European Union ('the Charter') **becomes** binding, **and which**, pursuant to Article 6(2) TEU, **creates an obligation for the EU** to accede to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Welcomes, furthermore, the forthcoming entry into force of Protocol No 14 to the ECHR, set for 1 June 2010, under which the EU may accede to the ECHR;

Amendment

1. **Notes that with the entry into force of** the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union ('the Charter') **has become** binding, **and welcomes the EU's obligation**, pursuant to Article 6(2) TEU, to accede to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Welcomes, furthermore, the forthcoming entry into force of Protocol No 14 to the ECHR, set for 1 June 2010, under which the EU may accede to the ECHR;

Or. fr

Amendment 2
Marie-Christine Vergiat

Draft opinion
Paragraph 2

Draft opinion

2. Notes that, while all the Member States have already ratified the ECHR, the accession to this instrument of the EU as a legal entity – **which** will not affect the situation of the Member States vis-à-vis the ECHR – **will give the new momentum envisaged for over a decade**. It will be of great political and legal importance in the **creation of a continent-wide area** of human rights, **and will strengthen** relations **between the EU and** the 'wider Europe', bringing a new dynamic into the field of

Amendment

2. Notes that, while all the Member States have already ratified the ECHR, the accession to this instrument of the EU as a legal entity will not affect the situation of the Member States vis-à-vis the ECHR, **pursuant to Protocol No 8 to the Treaty of Lisbon, and considers that it** will be of great political and legal importance in the **consolidation and strengthening** of human rights **in Europe, particularly in the Union, and will help to strengthen its** relations **with** the 'wider Europe', by

human rights *throughout Europe*. *The* accession *will enhance* the credibility of the EU in the field of human rights protection worldwide;

bringing a new dynamic into the field of human rights; *considers that this* accession *should help to* enhance the credibility of the EU in the field of human rights protection worldwide;

Or. fr

Amendment 3
Marie-Christine Vergiat

Draft opinion
Paragraph 3

Draft opinion

3. Underlines that the accession will *first and foremost* contribute to a *more* coherent *internal* human rights *system* within the EU. *The* accession *will* strengthen the EU's credibility in the eyes of its own citizens in the field of human rights protection, ensuring full and effective respect for *fundamental rights* whenever EU law is in play;

Amendment

3. Underlines that the accession will contribute to a *reduction in legal uncertainty in the area of human rights and fundamental freedoms in the Union and, consequently, to a* coherent *legal system for* human rights within the EU; *considers that the* accession *should help to* strengthen the EU's *trustworthiness and* credibility in the eyes of its own citizens in the field of human rights protection, ensuring full and effective respect for *human rights and fundamental freedoms* whenever EU law is in play;

Or. fr

Amendment 4
Marie-Christine Vergiat

Draft opinion
Paragraph 3 a (new)

Draft opinion

3a. Underlines in this respect the universal dimension of the content of the ECHR and its Additional Protocols, and that of other related texts, notably the

Amendment

European Social Charter of 1961; recalls that most of these instruments may be signed and ratified by parties outside Europe;

Or. fr

Amendment 5

Hélène Flautre, Heidi Hautala, Raül Romeva i Rueda, Tatjana Ždanoka

Draft opinion

Paragraph 3 a (new)

Draft opinion

Amendment

3a. Underlines also that the EU accession to the ECHR will imply a competence of the ECtHR on all aspects of EU law and legislation, in particular in the field of Justice and Home Affairs, including its external dimension;

Or. en

Amendment 6

Marie-Christine Vergiat

Draft opinion

Paragraph 4

Draft opinion

Amendment

4. ***Notes*** that, following the accession, the ECHR will ***intervene as a*** minimum standard of protection in cases where the protection granted by the EU is inferior to that provided in the ECHR. The ECHR reinforces protection of the rights recognised by the Charter that fall within its competence. ***The Charter goes further and also enshrines*** other rights and principles, including economic and social rights, ***as well as*** the right to data protection ***and good governance***;

4. ***Stresses*** that, following the accession, the ECHR will ***constitute the*** minimum standard of protection ***for human rights and fundamental freedoms in Europe and is crucial, in particular,*** in cases where the protection granted by the EU is inferior to that provided in the ECHR. The ECHR reinforces protection of the rights recognised by the Charter that fall within its competence. ***Stresses that the*** Charter also ***recognises*** other rights and principles, including economic and social rights, the

right to data protection, *the right to good administration and even bioethical rights, rights that are not contained in the ECHR but in the Additional Protocols and in instruments related to the ECHR;*

Or. fr

Amendment 7
Marie-Christine Vergiat

Draft opinion
Paragraph 5

Draft opinion

5. Notes that EU accession to the ECHR will provide the Union's citizens with an additional mechanism for enforcing their rights, namely the possibility of lodging a complaint with the European Court of Human Rights (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law ***and falling at the same time within the remit of the ECHR***. Stresses, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union (ECJ), and that the requirement that all ***domestic*** judicial remedies should have been exhausted will remain the condition for the eligibility of any application;

Amendment

5. Notes that EU accession to the ECHR will provide the Union's citizens with an additional mechanism for enforcing ***and ensuring respect for*** their rights ***by means of external judicial control by the European Court of Human Rights,*** namely the possibility of lodging a complaint with the European Court of Human Rights (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law. Stresses, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union (ECJ) ***nor that of the European Court of Human Rights,*** and that the requirement that all ***internal*** judicial remedies should have been exhausted will remain the condition for the eligibility of any application;

Or. fr

Amendment 8
Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion
Paragraph 5

Draft opinion

5. Notes that EU accession to the ECHR will provide the Union's citizens with an additional mechanism for enforcing their rights, namely the possibility of lodging a complaint with the European Court of Human Rights (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law and falling at the same time within the remit of the ECHR. Stresses, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union (ECJ), and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the eligibility of any application;

Amendment

5. Notes that EU accession to the ECHR will provide the Union's citizens with an additional mechanism for enforcing their rights, namely the possibility of lodging a complaint with the European Court of Human Rights (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law and falling at the same time within the remit of the ECHR. Stresses, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union (ECJ), and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the eligibility of any application; ***underlines in this context that it will be necessary to ensure that Member States' courts refer cases to the ECJ when there is an arguable fundamental rights issue at hand;***

Or. en

Amendment 9

Hélène Flautre, Heidi Hautala, Raül Romeva i Rueda, Tatjana Ždanoka

**Draft opinion
Paragraph 5**

Draft opinion

5. Notes that EU accession to the ECHR will provide ***the Union's citizens with*** an additional mechanism for enforcing ***their*** rights, namely the possibility of lodging a complaint with the European Court of Human Rights (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law and falling at the same time within the remit of the ECHR. Stresses, however, that this does not alter the present system of

Amendment

5. 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 (ECtHR) in relation to an act or failure to act by an EU institution or a Member State implementing EU law and falling at the same time within the remit of the ECHR. Stresses, however, that this does not alter the present system of jurisdiction of the

jurisdiction of the Court of Justice of the European Union (ECJ), and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the eligibility of any application;

Court of Justice of the European Union (ECJ), and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the eligibility of any application.

Reminds that a complaint in certain cases may relate to acts performed or producing effect outside the Union's territory;

Or. en

Amendment 10
Marie-Christine Vergiat

Draft opinion
Paragraph 5 a (new)

Draft opinion

Amendment

5a. Calls on the Commission to examine the requirement to exhaust internal remedies in order to guarantee the admissibility of applications, in consultation with the ECJ and the European Court of Human Rights; stresses in this context the need to examine the issue of preliminary rulings under EU law; calls for the chosen solution to guarantee EU citizens the right to lodge individual petitions in accordance with the relevant ECHR provisions, and for the citizens' applications and complaints to be dealt with in a reasonable period of time;

Or. fr

Amendment 11
Marie-Christine Vergiat

Draft opinion
Paragraph 5 b (new)

Draft opinion

Amendment

5b. Calls on the parties to the negotiations on the Union's accession to the ECHR to ensure that the amendments to the ECHR and its judicial system are limited to what is strictly necessary so as not to jeopardise the effectiveness and scope of the ECHR's control;

Or. fr

Amendment 12

Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion

Paragraph 7 – introductory words

Draft opinion

7. Points out that there are a number of legal, technical and institutional issues which are still outstanding and which will have to be addressed in the mandate to be adopted under Article 218 TFEU, as well as in the negotiations with the Council of Europe on accession to the ECHR. ***The most sensitive of them include:***

Amendment

7. Points out that there are a number of legal, technical and institutional issues which are still outstanding and which will have to be addressed in the mandate to be adopted under Article 218 TFEU, as well as in the negotiations with the Council of Europe on accession to the ECHR. ***Invites the Commission and the Council to make sure that:***

Or. en

Amendment 13

Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion

Paragraph 7 – indent 1

Draft opinion

– ***the fact that*** the scope of the accession ***should be*** precisely defined in the mandate; the EU ***should also*** accede, ***at the***

Amendment

– the scope of the accession ***is*** precisely defined in the mandate; the EU ***shall*** accede to all those Additional Protocols to

least, to all those Additional Protocols to the ECHR which complement the rights enshrined in the ECHR *and which have already been ratified by all the EU Member States*, thus forming part of the EU's human rights corpus. Furthermore, the accession to the revised European Social Charter should be *taken into consideration*;

the ECHR which complement the rights enshrined in the ECHR *or the Charter of Fundamental Rights*, thus forming part of the EU's human rights corpus. *In this regard, also invites Member States to speed up their signature and ratification - as well as to review their declarations and reserves - in relation to the ECHR and its Protocols*. Furthermore, the accession to the revised European Social Charter should be *foreseen*;

Or. en

Amendment 14

Hélène Flautre, Heidi Hautala, Raül Romeva i Rueda, Tatjana Ždanoka

Draft opinion

Paragraph 7 – indent 1

Draft opinion

- the fact that the scope of the accession should be precisely defined in the mandate; the EU should also accede, at the least, to all those Additional Protocols to the ECHR which *complement the rights enshrined in the ECHR and which have already been ratified by all the EU Member States, thus forming part of the EU's human rights corpus*. *Furthermore*, the accession to the revised European Social Charter *should* be taken into consideration;

Amendment

- the fact that the scope of the accession should be precisely defined in the mandate; the EU should also accede, at the least, to all those Additional Protocols to the ECHR which *are already enshrined by EU law, including the Charter of Fundamental Rights of the European Union, and so applicable to the EU*. *In consequence*, the accession to the revised European Social Charter *and other relevant Council of Europe human rights treaties must* be taken into consideration;

Or. en

Amendment 15

Debora Serracchiani

Draft opinion

Paragraph 7 – indent 1

Draft opinion

- the fact that the scope of the accession should be precisely defined in the mandate; the EU should also accede, at the least, to all those Additional Protocols to the ECHR which complement the rights enshrined in the ECHR **and which have already been ratified by all the EU Member States**, thus forming part of the EU's human rights corpus. Furthermore, the accession to the revised European Social Charter should be taken into consideration;

Amendment

- the fact that the scope of the accession should be precisely defined in the mandate; the EU should also accede, at the least, to all those Additional Protocols to the ECHR which complement the rights enshrined in the ECHR, thus forming part of the EU's human rights corpus. Furthermore, the accession to the revised European Social Charter should be taken into consideration;

Or. it

Amendment 16

Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion

Paragraph 7 – indent 2

Draft opinion

– **the need for the EU's representation and participation** in the Council of Europe's bodies **to be clarified**; although with the accession to the ECHR the EU will not become a member of the Council of Europe, it **should** be represented on all those bodies where as a result of the accession EU matters are affected, while the European Parliament **should be represented in the procedure to elect a judge to the ECtHR**;

Amendment

– the **EU is properly represented and participates** in the Council of Europe's bodies; although with the accession to the ECHR the EU will not become a member of the Council of Europe, it **shall** be represented **on the same footing as the other parties** on all those bodies where as a result of the accession EU matters are affected, **such as the Council of Ministers at least when supervising the execution of judgements, and at least the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Commission for the Efficiency of Justice (CEPEJ), the European Commission against Racism and Intolerance (ECRI) and the Steering Committee for Human Rights (CDDH)**, while the European Parliament **shall be called to give its consent to the nomination of the three EU candidates**

for the post of judge in the ECtHR and be represented in the Council of Europe Parliamentary Assembly, namely on the occasion of the election of the EU judge to the ECtHR; the EU permanent, full-time judge shall also participate in the ECtHR on an equal footing, while a co-respondent mechanism has to be set so as to comply with the principle of autonomous interpretation of EU law;

Or. en

Amendment 17
Marie-Christine Vergiat

Draft opinion
Paragraph 7 – indent 2

Draft opinion

- the need for the EU's representation and participation in the Council of Europe's bodies to be clarified; although with the accession to the ECHR the EU will not become a member of the Council of Europe, it should be represented on all those bodies *where as a result of the accession EU matters are affected*, while the European Parliament should *be represented* in the procedure to elect a judge to the ECtHR;

Amendment

- the need for the EU's representation and participation in the Council of Europe's bodies to be clarified; although with the accession to the ECHR the EU will not become a member of the Council of Europe, it should be represented on all those bodies *that monitor respect for, and promotion of, human rights and fundamental freedoms and that deal with the fundamental rights in the Charter and the objectives and principles of the Union (social rights, ban on torture, fight against racism, etc.)*, while the European Parliament should *participate* in the procedure to elect a judge to the ECtHR;

Or. fr

Amendment 18
Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion
Paragraph 7 – indent 3

Draft opinion

– the *need for* relations between the ECJ and the ECtHR *to be* refined, leaving the two courts the necessary flexibility to determine how best to cooperate in order to achieve an enhanced regular dialogue. This could, in addition, contribute to the development of the abovementioned case-law system;

Amendment

– the relations between the ECJ and the ECtHR *are* refined, leaving the two courts the necessary flexibility to determine how best to cooperate in order to achieve an enhanced regular dialogue. This could, in addition, contribute to the development of the abovementioned case-law system;

Or. en

Amendment 19
Marie-Christine Vergiat

Draft opinion
Paragraph 7 – indent 4

Draft opinion

- the need for the problems faced by the ECtHR to be dealt with; EU accession to the ECHR, *rather than diminishing its effectiveness, should* lead to an improved system *of implementation of the subsidiarity principle, and thus to fewer repetitive applications at the ECtHR; this in turn would relieve the burden on the ECtHR itself. It is of the utmost importance that the right balance should be struck between provision of access to the additional remedy and the need to avoid overloading the ECtHR. Welcomes the fact, therefore, that the accession of the EU will coincide with* the reform of the ECtHR;

Amendment

- the need for the problems faced by the ECtHR to be dealt with; EU accession to the ECHR *must* lead to an improved *ECHR* system. *Calls on the Union, within the framework of its accession to the ECHR, to participate fully in* the reform of the ECtHR *with a view to improving the way in which it functions and the speed with which it deals with the applications and complaints submitted to it; calls on the Union and its Member States to ensure respect for human rights and fundamental freedoms when drawing up and applying their respective laws and to ensure that internal judicial remedies are effective, in accordance with the principle of subsidiarity laid down in the 1969 Vienna Convention on the Law of Treaties, in order to avoid unnecessary referrals to the European Court of Human Rights;*

Or. fr

Amendment 20

Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion

Paragraph 7 – indent 4

Draft opinion

– *the need for* the problems faced by the ECtHR *to be* dealt with; EU accession to the ECHR, rather than diminishing its effectiveness, should lead to an improved system of *implementation* of the subsidiarity principle, *and thus* to fewer repetitive applications at the ECtHR; this in turn would relieve the burden on the ECtHR itself. *It is of the utmost importance that the right balance should be struck between provision of access to the additional remedy and the need* to avoid overloading the ECtHR. Welcomes the fact, therefore, that the accession of the EU will coincide with the reform of the ECtHR;

Amendment

– the problems faced by the ECtHR *are* dealt with *and relieved through EU support*; EU accession to the ECHR, rather than diminishing its effectiveness, should lead to an improved system of *prompt and full execution of ECtHR judgments by the Member States and the EU by ensuring that, on the basis of the application* of the subsidiarity principle, *Member States and EU institutions properly abide to the human rights obligations they have contracted to by accessing the ECHR and address structural problems through reforms, hereby leading* to fewer *and less* repetitive applications at the ECtHR; this in turn would relieve the burden on the ECtHR itself, *so as* to avoid overloading of the ECtHR. Welcomes the fact, therefore, that the accession of the EU will coincide with the reform of the ECtHR;

Or. en

Amendment 21

Marie-Christine Vergiat

Draft opinion

Paragraph 7 a (new)

Draft opinion

Amendment

7a. As a result of the social rights contained in the Charter of Fundamental Rights of the European Union and in the Community Charter of Fundamental Social Rights for Workers, calls on the

Union to accede to the 1961 Social Charter and to the revised Social Charter; calls on the Commission to participate, as an observer, in the work of the Commissioner for Human Rights, the European Committee of Social Rights (ECSR) and the Governmental Committee of the Social Charter in particular;

Or. fr

Amendment 22
Marie-Christine Vergiat

Draft opinion
Paragraph 7 b (new)

Draft opinion

Amendment

7b. Stresses that Article 1 of the ECHR guarantees that every person within EU jurisdiction will be able to invoke the ECHR against acts by the Union, including acts in the field of foreign relations, and will potentially be able to refer a matter to the European Court of Human Rights; stresses, too, that Article 1 of the ECHR guarantees protection not only for EU citizens and other individuals in Union territory, but also for all individuals within EU jurisdiction even outside its territory;

Or. fr

Amendment 23
Gianni Vattimo, Sophia in 't Veld, Renate Weber

Draft opinion
Paragraph 9

Draft opinion

Amendment

9. Underlines that, as the accession to the

9. Underlines that, as the accession to the

ECHR concerns not only the EU institutions, but also the Union's citizens, the European Parliament should be consulted and involved throughout the negotiation process, and should be immediately and fully informed at all stages of the negotiations, as provided for in Article 218(10) TEU;

ECHR concerns not only the EU institutions, but also the Union's citizens, the European Parliament should be consulted and involved throughout the negotiation process, and should be ***associated and*** immediately and fully informed at all stages of the negotiations, as provided for in Article 218(10) TEU;

Or. en

Amendment 24
Debora Serracchiani

Draft opinion
Paragraph 9

Draft opinion

9. Underlines that, as the accession to the ECHR concerns not only the EU institutions, but also the Union's citizens, the European Parliament ***should*** be consulted and involved throughout the negotiation process, and ***should*** be immediately and fully informed at all stages of the negotiations, as provided for in Article 218(10) TEU;

Amendment

9. Underlines that, as the accession to the ECHR concerns 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 immediately and fully informed at all stages of the negotiations, as provided for in Article 218(10) TEU;

Or. it

Amendment 25
Debora Serracchiani

Draft opinion
Paragraph 9 a (new)

Draft opinion

9a. Stresses that it is important to have an informal body in order to coordinate information sharing between the European Parliament and the Parliamentary Assembly of the Council of

Europe;

Or. en

Amendment 26
Debora Serracchiani

Draft opinion
Paragraph 10

Draft opinion

10. Suggests that, in order to disseminate the added value of the accession to citizens, the Council of Europe and the EU should consider developing guidelines with clear explanations of all the implications and effects that accession would bring;

Amendment

10. Suggests that, in order to disseminate the added value of the accession to citizens, the Council of Europe and the EU should consider developing guidelines ***and advice and information programmes for the citizens*** with clear explanations of all the implications and effects that accession would bring;

Or. it

Amendment 27
Marie-Christine Vergiat

Draft opinion
Paragraph 10 a (new)

Draft opinion

Amendment

10a. Hopes in this regard that the Commission and Member States will conduct an information campaign for EU citizens to ensure that they are fully aware of how to exercise their new rights of petition in the field of human rights;

Or. fr

Amendment 28
Marie-Christine Vergiat

Draft opinion
Paragraph 11

Draft opinion

11. Welcomes the commitment shown by the current Spanish Presidency in treating the accession as a ‘matter of urgency’ and the positive and cooperative attitude of the Council of Europe in this respect. Finally, calls on the Belgian and Hungarian Presidencies to do their utmost to finalise the accession at the earliest suitable opportunity.

Amendment

11. Welcomes the commitment shown by the current Spanish Presidency in treating the accession as a ‘matter of urgency’ and the positive and cooperative attitude of the Council of Europe in this respect. Finally, calls on the Belgian and Hungarian Presidencies to do their utmost to finalise the accession at the earliest suitable opportunity ***and in as simple and accessible a manner as possible so that EU citizens can benefit as soon as possible from the Union’s accession to the ECHR.***

Or. fr

Amendment 29
Wim van de Camp

Draft opinion
Paragraph 11 a (new)

Draft opinion

Amendment

11a. Notes that, following the EU accession to the European Convention on Human Rights it can occur that both the European Court of Human Rights (ECtHR) as well as the Court of Justice of the European Union (ECJ) have jurisdiction on certain cases and points out that the possibility to bring such a case to two Courts should not be allowed.

Or. en

