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

Rapporteur: Ramón Jáuregui Atondo

Rapporteur for the opinion (*):

Kinga Gál, Committee on Civil Liberties, Justice and Home Affairs

(*) Associated committee – Rule 50 of the Rules of Procedure
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(*) Associated committee – Rule 50 of the Rules of Procedure
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, Articles 216(2), 218(6), 218(8) and 218(10) 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 (hereafter referred to as the ECHR),

– having regard to the decision of the Conference of Presidents of 14 January 2010 authorising the application of Rule 50 of the Rules of Procedure (procedure with associated committees)¹,

– having regard to Rule 48 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 and the Committee on Foreign Affairs (A7-0144/2010),

A. whereas, in case law which has remained consistent since the judgments in Case 11-70 Internationale Handelsgesellschaft mbH [1970] ECR² and in Case 4-73 Nold [1974] ECR³, the Court of Justice of the European Union 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 of Justice of the European Union 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 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 of the European Union 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 Union law,

¹ Minutes of the meeting of the Conference of Presidents, PE432.390/CPG, point 9.1
² ECR 1970, p.1125
³ ECR 1974, p.491
F. whereas, in an opinion of 28 March 1996, the Court of Justice of the European Union found that the European Community could not accede to the ECHR without a previous amendment to the Treaty because the Community did not have an explicit or implicit competence to do so,

G. whereas the limits set by the Lisbon Treaty and the Protocols thereto must be upheld at the time of accession and, more specifically, Article 6(2) of the Treaty on European Union and Protocol No 8 to the Lisbon Treaty; whereas these provisions do not merely constitute an option allowing the Union to accede but require the Union institutions to act accordingly, and whereas the agreement on the accession of the Union to the ECHR must reflect the need to retain the specific features of the Union and of Union law,

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 operating costs of the European Court of Human Rights; whereas in that context plans should be made to establish an autonomous budget for the European Court of Human Rights to facilitate assessment of the various contributions,

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 of the European Union, will have the benefit of an external protection body which is international in character,

K. whereas the ECHR has been developed not only through the additional Protocols, but also through other Conventions, Charters and Agreements, resulting into a continuously evolving system of protection of Human Rights and Fundamental Freedoms

L. Stresses 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; thus 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 European Court of Human Rights;

2. Recalls that, pursuant to Article 6 of the Treaty on European Union and Protocol No 8, 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, pursuant to Article 4(2) and Article 6(3) of the Treaty on European Union, the Member States' traditions and constitutional identities must be respected;

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 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;

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 recommends that the Commission be mandated also to negotiate accession to all the protocols concerning rights corresponding to the Charter of Fundamental Rights (1, 4, 6, 7, 12 and 13), regardless of whether they have been ratified by the Member States of the Union;

5. Stresses that, as the accession of EU to the ECHR is an accession of a non-State Party to a legal instrument created for States, it should be completed without altering the features of the ECHR and modifications to its judicial system should be kept to a minimum; considers it important, in the interests of those in both the Union and third countries who are seeking justice, to give preference to accession arrangements that will have the least impact on the workload of the European Court of Human Rights;
6. Emphasises that, in tandem with the necessary political commitment, it is of the utmost importance that adequate answers and solutions be found to the main technical questions in order to enable the EU’s accession to the ECHR to be used for the benefit of citizens; points out that unresolved and unclear details may create confusion and endanger the very purpose of the accession; stresses, however, that technical impediments should not be allowed to delay the process;

7. 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:

– 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, pursuant to Article 27(2) of the ECHR; 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 Treaty on the Functioning of the European Union for candidates for the position of judge at the Court of Justice of the European Union, or under a procedure similar to the hearings of candidates-designate of the European Commission,

– 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 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;

8. Considers that the Member States should undertake, at the time of accession to the ECHR, with respect to one another and in their mutual relations with the Union, not to bring interstate applications concerning an alleged failure of compliance pursuant to Article 33 of the ECHR when the act or omission in dispute falls within the scope of Union law, as this would be contrary to Article 344 of the Treaty on the Functioning of the European Union;

9. Considers that the principal added value of the accession of the EU to the ECHR 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;

10. Considers that for the purposes of complying with the requirement set out in Article 35 ECHR for domestic remedies to have been exhausted, the applicant shall have exhausted the judicial remedies of the State concerned including a reference for a preliminary ruling to the Court in Luxembourg; the latter procedure shall be regarded as having been complied with where following a request to that end by the applicant the national court does not consider it appropriate for a reference for a preliminary ruling to be made;

11. Notes that, following the EU’s accession to the ECHR, it might occur that both the European Court of Human Rights and the Court of Justice of the European Union have jurisdiction in certain cases, and points out that simultaneous referrals to the two Courts will not be admissible;

12. Considers it appropriate that, in the interests of the proper administration of justice and without prejudice to Article 36(2) of the ECHR, 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 be permitted to intervene as a co-defendant, and that in any case brought against the Union subject to the same conditions any Member State may be permitted to intervene as a co-defendant; this possibility must be defined in the provisions of the accession treaty in a manner which is both clear and sufficiently broad;

13. Considers that the adoption of the institution of co-defendant does not impede other indirect options provided by the ECHR (Article 36, I), such as the right of the Union to intervene as a third party in any application by an EU citizen;

14. 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;

15. 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; 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 of the European Union and the European Court of Human Rights, which should be reinforced when the Union accedes to the ECHR;

16. Is clearly aware of the fact that the European Court of Human Rights may find a violation in a case that has already been decided by the Court of Justice of the European Union and stresses that this would in no way cast a doubt on the credibility of the Court of Justice of the European Union as an ultimate umpire in the EU judicial system;

17. Stresses 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; points out that the ECHR reinforces protection of the rights recognised
by the Charter of Fundamental Rights that come within its scope and that the Charter also recognises other rights and principles, which are not contained in the ECHR, but in the additional protocols and in instruments related to the ECHR;

18. 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; takes 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; stresses, 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;

19 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 of the European Union 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;

20. Emphasises the significance of the ECHR and the case law of the European Court of Human Rights in providing a legal framework and guiding principles for current and future EU action in the domain of civil liberties, justice and home affairs, especially in the light of the new forms of integration and harmonisation in civil liberties, justice and home affairs initiated by the entry into force of the Treaty of Lisbon and the adoption of the Stockholm Programme;

21. Stresses that the accession will, first and foremost, contribute to a more coherent human rights system within the EU; takes the view that 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;

22. 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; 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);

23. 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; stresses, 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; calls for applications and complaints to be dealt with in a reasonable period of time; encourages the Commission to provide
some guidance, in consultation with the Court of Justice of the European Union and the European Court of Human Rights, on what constitutes the appropriate domestic remedy within the Union and on preliminary rulings under EU law; stresses, in this context, that it will be necessary to ensure that Member State courts refer cases to the Court of Justice of the European Union when there is arguably a fundamental rights issue at hand;

24. Stresses that, at the same time, 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; 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;

25. Welcomes, further, the fact that Article 1 of the ECHR would not only guarantee protection to EU citizens and other individuals within Union territory, but also outside Union territory to any individuals who come under its jurisdiction;

26. 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 requests and on the other hand the reform of the structure and functioning of the Court to cope with it; notes that the European Court of Human Rights recognises that it operates in a complex legal and political environment, and notes that the entry into force of Protocol No 14 on 1 June 2010 will certainly help to reduce the number of uncompleted procedures but will not eliminate them; stresses, in the context of the reform of the European Court of Human Rights, the importance of the Interlaken Declaration, with particular reference to paragraph 4 thereof, which rightly calls for a uniform and rigorous application of the criteria concerning admissibility and the Court’s jurisdiction;

27. Considers it essential to maintain the independence of the European Court of Human Rights in terms of personnel and budgetary policy;

28. 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;

29. Encourages the national parliaments of the EU Member States to clearly express their will and readiness to facilitate the accession process by involving their national courts and ministries of justice;

30. Notes that accession by the Union to the ECHR signifies the recognition by the EU of the entire system of protection of human rights, as developed and codified in numerous documents and bodies of the Council of Europe; in this sense, accession by the Union to the ECHR constitutes an essential first step which should subsequently be complemented by accession by the Union to, inter alia, 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;

31. Calls, further, for the Union to accede to Council of Europe bodies such as the Committee on the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI) and the European Commission on the Efficiency of Justice (CEPEJ); stresses also the need for the Union to be involved in the work of the Commissioner for Human Rights, the European Committee of Social Rights (ECSR), the Governmental Social Committee and the European Committee on Migration, and asks to be duly informed of the conclusions and decisions of these bodies;

32. Takes the view that, for the benefit of citizens, democracy and human rights in Europe and the EU, and to guarantee respect for and the safeguarding of human rights, cooperation between the institutions of the European Union and the specialised bodies of the Council of Europe should be strengthened in order to help bring about greater consistency and greater complementarity in the sphere of human rights at pan-European level;

33. 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; maintains that 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;

34. 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;

35. 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, as provided for in Article 218(10) of the Treaty on European Union;

36. 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; 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 may benefit as soon as possible from the Union’s accession to the ECHR;

37. Insists, in view of the important role that the Lisbon Treaty confers on the European Parliament as regards conclusion of the accession agreement, that it be duly informed of the definition of the negotiating mandate for accession to the ECHR and that it be closely involved in the preliminary discussions and also in the conduct of negotiations on that text, in accordance with the provisions of Article 218 of the Treaty on the Functioning of the European Union;

38. Instructs its President to forward this resolution to the Council and the Commission.
27.4.2010

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS (*)

for the Committee on Constitutional Affairs

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))

Rapporteur (*): Kinga Gál

(*) Procedure with associated committees – Rule 50 of the Rules of Procedure

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the important achievement represented by the Treaty of Lisbon, which makes the Charter of Fundamental Rights of the European Union (‘the Charter’) binding, and creates an obligation, pursuant to Article 6(2) TEU, 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;

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; considers that it will give the new momentum envisaged for over a decade and will be of great political and legal importance in the creation of a continent-wide area of human rights and that, furthermore, it will foster the consolidation and strengthening of human rights in Europe and help to reinforce relations between the EU and the ‘wider Europe’, by bringing a new dynamic into the field of human rights; considers that it should also help to enhance the credibility of the EU in the field of human rights protection worldwide;

3. Emphasises the significance of the ECHR and the case law of the European Court of
Human Rights (ECtHR) in providing a legal framework and guiding principles for current and future EU action in the domain of civil liberties, justice and home affairs, especially in the light of the new forms of integration and harmonisation in civil liberties, justice and home affairs initiated by the entry into force of the Treaty of Lisbon and the adoption of the Stockholm Programme;

4. Stresses that the accession will, first and foremost, contribute to a more coherent human rights system within the EU; takes the view that 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;

5. Underlines that, after the accession, the competence of the ECtHR when judging matters coming under the ECHR may not be contested on the basis of the internal structure of EU law; underlines also that the competence of the ECtHR 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);

6. Stresses 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; points out that the ECHR reinforces protection of the rights recognised by the Charter that come within its scope and that the Charter also recognises other rights and principles, which are not contained in the ECHR, but in the additional protocols and in instruments related to the ECHR;

7. 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 ECtHR 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; 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 domestic judicial remedies should have been exhausted will remain the condition for the admissibility of any application; calls for applications and complaints to be dealt with in a reasonable period of time; encourages the Commission to provide some guidance, in consultation with the ECJ and the ECtHR, on what constitutes the appropriate domestic remedy within the Union and on preliminary rulings under EU law; stresses, in this context, that it will be necessary to ensure that Member State courts refer cases to the ECJ when there is arguably a fundamental rights issue at hand;

8. Stresses that, at the same time, the accession will require enhanced cooperation between national courts, the ECJ and the ECtHR in protecting fundamental rights; 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;

9. Points out that a number of legal, technical and institutional issues are still outstanding and will need 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; calls on the Commission and the Council to ensure that:
the scope of the accession is precisely defined in the mandate; the EU shall accede, at 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; in this regard, also invites Member States to ratify all those additional protocols to the ECHR which refer to the rights enshrined in the Charter of Fundamental Rights and are accordingly applicable to the EU; furthermore, accession to the revised European Social Charter and other relevant Council of Europe human rights treaties should be taken into consideration;

the EU is properly represented, and participates, in the Council of Europe’s bodies; that, although with the accession to the ECHR the EU will not become a member of the Council of Europe, it is represented on all those human rights bodies where, as a result of the accession, EU matters are affected (such as the CPT, ECRI, CEPEJ and CDDH), and in the Committee of Ministers, at least when supervising the execution of judgments on EU fundamental rights-related matters, while the European Parliament participates and is represented in the procedure to elect a judge to the ECtHR – at EU level when the EU candidates for the post are appointed and in the PACE when the judge is elected;

the relations between the ECJ and the ECtHR are clarified, leaving the two courts the necessary flexibility to determine how best to cooperate in order to achieve an enhanced regular dialogue and, in addition, potentially contributing to the development of the abovementioned case-law system;

the problems faced by the ECtHR are dealt with and relieved through EU support; that EU accession to the ECHR, rather than diminishing its effectiveness, should lead to an improved system; that the EU and its Member States ensure respect for human rights and fundamental freedoms and make sure 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 prevent the over-burdening of the ECtHR with repetitive applications or unnecessary referrals; and that – and this is crucially important – the accession of the EU coincides with the reform of the ECtHR;

10. Emphasises that, in tandem with the necessary political commitment, it is of the utmost importance that adequate answers and solutions be found to the main technical questions in order to enable the EU’s accession to the ECHR to be used for the benefit of citizens; points out that unresolved and unclear details may create confusion and endanger the very purpose of the accession; stresses, however, that technical impediments should not be allowed to delay the process;

11. 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, as provided for in Article 218(10) TEU;

12. 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;
13. 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; maintains that 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;

14. 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; 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 may benefit as soon as possible from the Union’s accession to the ECHR;

15. Notes that, following the EU’s accession to the ECHR, it might occur that both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (ECJ) have jurisdiction in certain cases, and points out that simultaneous referrals to the two Courts will not be admissible.
RESULT OF FINAL VOTE IN COMMITTEE

<table>
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<th>Date adopted</th>
<th>27.4.2010</th>
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| Result of final vote | +: 41  
|                    | -: 1    
|                    | 0: 0    |
| Members present for the final vote | Roberta Angelilli, Vilija Blinkevičiūtė, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeyts, Carlos Coelho, Cornelis de Jong, Agustín Diaz de Mera García Consuegra, Cornelia Ernst, Hélène Flautre, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Ágnes Hankiss, Anna Hedt, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Clemente Mastella, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Tatjana Ždanoka |
| Substitute(s) present for the final vote | Alexander Alvaro, Edit Bauer, Anna Maria Corazza Bildt, Ioan Enciu, Nadja Hirsch, Franziska Keller, Petru Constantin Luhan, Martiya Nedelcheva, Norica Nicolai, Cecilia Wikström |
19.3.2010

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Constitutional Affairs

on 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))

Rapporteur: Cristian Dan Preda

SUGGESTIONS

The Committee on Foreign Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the prospect of the European Union’s accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which offers an historic opportunity to coordinate a common framework for human rights across the continent and within the European Union, thus making it possible to safeguard human rights and fundamental freedoms for EU citizens and Member States on the same basis, to establish an additional external control system for human rights in the EU and to ensure the harmonious development of the case-law of the Court of Justice of the European Union and the European Court of Human Rights;

2. 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; takes 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; stresses, 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;

3. Welcomes the elimination of double standards in the Union's human rights policy, as prior to accession the EU was not legally bound to respect human rights, whereas after accession there will be external judicial scrutiny of Union acts monitoring their compatibility with the ECHR;

4. Points out the added value of the Five Protocols to the ECHR in terms of enforcing and protecting certain rights and freedoms within and outside the scope of the Convention and conferring upon the European Court of Human Rights the competence to give advisory...
opinions; is of the opinion that, when the EU accedes to the ECHR, it should also accede to the Protocols to the Convention, as well as to the European Social Charter of 1961 and the revised Social Charter; notwithstanding Article 2 of Protocol No 8 to the Lisbon Treaty, asks the Member States that have not yet done so to sign and ratify the various ECHR supplementary protocols as soon as possible, in view of their repeatedly voiced commitment to the values and principles underlying democracy and the rule of law in our Member States and the European Union;

5. Welcomes, further, the fact that Article 1 of the ECHR would not only guarantee protection to EU citizens and other individuals within Union territory, but also outside Union territory to any individuals who come under its jurisdiction;

6. Recalls that, in accordance with Protocol No 8 annexed to the Treaty of Lisbon, a clear mechanism must be established to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the European Union;

7. Points out that, when an application is submitted under Article 34 of the ECHR, the defendant must be identified in accordance with the provisions of European Union law and subject ultimately to legal review by the Court of Justice and that this must not prejudice citizens’ rights to make individual applications;

8. Is of the opinion that, in the interests of legal certainty and transparency in international relations, individuals and non-Member States must be correctly informed as to which matters fall within the sphere of competence of the Member States and which within that of the European Union, if need be by means of a declaration of competence appended to the accession treaty; stresses, in this context, the need to establish an information mechanism that takes account of future developments in the distribution of powers between the European Union and its Member States;

9. Stresses that, as the accession of EU to the ECHR is an accession of a non-State Party to a legal instrument created for States, it should be completed without altering the features of the ECHR and modifications to its judicial system should be kept to a minimum; considers it important, in the interests of those in both the Union and third countries who are seeking justice, to give preference to accession arrangements that will have the least impact on the workload of the European Court of Human Rights;

10. Voices its firm opposition to any mechanism for preventing divergences in case-law between the European Court of Human Rights and the Court of Justice of the European Union that would result in longer procedural delays for those seeking justice;

11. Points out that the link with the Council of Europe, and in particular questions regarding the European Union’s participation in the Committee of Ministers and the Parliamentary Assembly, are a matter for the Statute of the Council of Europe which requires amendment of the latter, or at least the adoption of a Statutory Resolution setting out the proposed amendments so that the changes brought about by the entry into force of the Lisbon Treaty are taken into account;

12. Insists on Parliament’s right to exercise democratic scrutiny being duly respected during
the procedure to appoint the European Union’s representative to the Committee of Ministers and the Steering Committee for Human Rights and, in general, in connection with any appointment to a Council of Europe body of which it is agreed under the accession treaty that the European Union is to be a member;

13. Considers that Parliament should take into account as a matter of priority the committees responsible for appointing members to sit in the Parliamentary Assembly of the Council of Europe;

14. Takes the view that, for the benefit of citizens, democracy and human rights in Europe and the EU, and to guarantee respect for and the safeguarding of human rights, cooperation between the institutions of the European Union and the specialised bodies of the Council of Europe should be strengthened in order to help bring about greater consistency and greater complementarity in the sphere of human rights at pan-European level;

15. Calls, further, for the Union to accede to Council of Europe bodies such as the Committee on the Prevention of Torture (CPT), the European Commission against Racism and Intolerance (ECRI) and the European Commission on the Efficiency of Justice (CEPEJ); stresses also the need for the Union to be involved in the work of the Commissioner for Human Rights, the European Committee of Social Rights (ECSR), the Governmental Social Committee and the European Committee on Migration, and asks to be duly informed of the conclusions and decisions of these bodies;

16. 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.

17. Insists, in view of the important role that the Treaty confers on the European Parliament as regards conclusion of the accession agreement, that it be duly informed of the definition of the negotiating mandate for accession to the ECHR and that it be closely involved in the preliminary discussions and also in the conduct of negotiations on that text, in accordance with the provisions of Article 218 TFEU.
## RESULT OF FINAL VOTE IN COMMITTEE

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<td><strong>Result of final vote</strong></td>
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<td>4</td>
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<td><strong>Substitute(s) present for the final vote</strong></td>
<td>Laima Liucija Andrikienė, Charalampos Angourakis, Elena Băescu, Diogo Feio, Georgios Kountoutsakos, Emilio Menéndez del Valle, Doris Pack, Vittorio Prodi, Indrek Tarand, Alejo Vidal-Quadras, Renate Weber, Janusz Władysław Zemke</td>
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<tr>
<td><strong>Substitute(s) under Rule 187(2) present for the final vote</strong></td>
<td>Teresa Jiménez-Becerril Barrio</td>
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# RESULT OF FINAL VOTE IN COMMITTEE

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| Result of final vote | +: 18  
| | -: 1  
| | 0: 0  |
| Members present for the final vote | Carlo Casini, Andrew Duff, Zita Gurmai, Gerald Häfner, Stanimir Ilchev, Ramón Jáuregui Atondo, Constance Le Grip, Morten Messerschmidt, Potito Salatto, György Schöpflin, Indrek Tarand, Rafał Trzaskowski, Luis Yáñez-Barnuevo García |
| Substitute(s) present for the final vote | Marietta Giannakou, Enrique Guerrero Salom, Alain Lamassoure, Íñigo Méndez de Vigo, Vital Moreira, Helmut Scholz |