

Accession of the EU to the ECHR

"Filling the gap"

Strasbourg's control on EU legal acts will improve Human Rights' protection in Europe



The accession of the European Union to the European Convention of Human Rights, discussed for more than thirty years, now at a closer reach after the entry into force of the Lisbon Treaty, was at the center of the interview given by Mr. Johan Callewaert, (JC) Deputy Grand Chamber Registrar at the European Court Human Rights, to ELSA International.

ELSA: *Can you tell us about your background?*

JC: I have been working with the Registry of the Court for about 20 years now. For the last 10 years I have been following very closely the development of EU law in respect of fundamental rights, including the drafting of the EU Charter on Fundamental Rights in my capacity as a member of the delegation of the CoE, present as observer in the Convention which drafted it. Ever since that time and already before, I have been personally interested in these matters.

ELSA: *How is accession related to the Lisbon Treaty and what are the next steps for it?*

JC: One of the main obstacles on the way to accession was the lack of a legal basis for that, as stated by an opinion of the Court of Justice. So now, after waiting for the Lisbon Treaty to come into effect we have that legal basis. Anyway, it will still take time. The idea is that we should first aim at reaching an agreement between the Council of Europe and the European Union on the terms of an accession treaty which should contain all the new legal provisions needed on both sides to enable accession to happen, including the requisite amendments to the Convention of Human Rights. The provision of the Treaty on the functioning of the EU dealing with the matter, article 218, provides for quite a heavy procedure. Then, we would need a unanimous decision by the European Council, the approval of the

European Parliament, possibly an opinion by the Court of Justice, followed by ratifications by the Member States, including the ones that are part of the Council of Europe but not of the European Union. It is a long way to go; the most important is to keep a good pace in the negotiations.

ELSA: *Will the accession by the EU lead to the creation of a special status for the EU within the CoE?*

JC: It is very clear that the accession of the Union to the Convention would not be linked in any way to an accession by the Union to the Council of Europe. As far as the status of the Union within the system of the Convention is concerned, the idea is to treat the Union as much as possible as just another Party to the Convention. The Strasbourg Court already stressed several times the importance of treating all Contracting Parties on an equal footing. To sum up, in principle, no special status for the EU within the Convention unless and to the extent that it is dictated by the specificities of the Union.

ELSA: *The European Court of Justice has already referred often to the case law of the Strasbourg Court in order to define Human Rights standards. How do you see the judicial dialogue between the two Courts developing after the accession?*

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ELSA International at Council of Europe

From top left to right bottom: Mirko Djukovic, Óscar A. Lema Bouza, Leonid Cherniavsky, Laurits Ketscher, Paolo Amorosa, Ezgi Kilinc, Frida Orring, Amanda Bertilsdotter Nilsson, Sofia Kallio and Johan Callewaert

JC: There is, I would say, regular communication between the Courts. And this has been, interestingly, a reality that has been taken note of in the Lisbon Treaty. In one of the Declarations in its Final Act, the one on Article 6 § 2 of the Treaty on European Union, the Conference notes the existence of a regular dialogue between the two Courts and states that "such dialogue could be reinforced when the Union accedes to [the] Convention". Even without this provision this is what would have happened anyway. Due to the entry into force of the Lisbon Treaty dialogue will intensify necessarily because of two reasons: firstly, the competences of the Court of Justice have been extended in the Lisbon Treaty to cover a number of areas which are very relevant from a human rights point of view. In other words, more litigation where you may have an overlap of competences between the two Courts. Secondly, with the entry into force of the Lisbon Treaty, the EU Charter of Fundamental Rights gains primary law status, with the consequence that now all the jurisdictions in Europe applying EU law, including, of course, the Court of Justice, are now bound to apply the Charter, which is made for about half

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of its content of rights borrowed from the European Convention on Human Rights.

ELSA: In your opinion, what will be the impact of the accession on the protection of Human Rights in Europe?

JC: Since we have been trying to achieve accession for more than thirty years now, it should be an indication that it is worth it. We have to distinguish three different levels. Firstly, we still have a gap in Human Rights' protection in respect of the European Union, in so far no act by any of the EU institutions can be filed in Strasbourg, there is no external control in respect of these acts such as, of course,



Front of the Council of Europe headquarters in Strasbourg.
The accession of the EU to the ECHR has been a long working process.

judgements of the Court of Justice. Linked to that, you have an important political aspect, the fact that it certainly enhances the credibility of the Union if, in the same way as all its Member States, it can say that it accepts external control by the Strasbourg Court. There is a third level where accession would have an important impact, and that is the level of the procedure before the Strasbourg Court. If we

will have the Union appearing before it, judgements given by it will be binding also upon the Union itself. For what can happen today is that a Member State confronted by a judgement of the Court of Human Rights, finding a violation of the Convention which is a direct consequence of EU law, Thus, it would find itself bound to execute a judgement which it does not have the competence to execute. In such situations, it would help a lot if the EU as such was a defendant in the proceedings, for it would then also be under an obligation to execute the judgement. Changing this situation would certainly also be a big step in increasing protection of human rights in Europe.

ELSA: *Do you have any recommendation for European law students on how to interact with the development of European Institutions?*

JC: The EU should not solely be run by experts. There is need for the support of the population and for EU law to be understandable for citizens. As young Europeans let your voices be heard.

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