



UNIVERSITY OF PERUGIA
DEPARTMENT OF PUBLIC LAW
“The Effectiveness of Rights in the Light of European Court of Human Rights
Case Law”

THE EU ACCESSION TO THE ECHR

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According to Article 6(2) TEU, as amended by the Treaty of Lisbon, “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms”. Said Article has introduced the necessary legal basis for the EU accession to the ECHR, which was previously found lacking by the Court of Justice (ECJ, Opinion 2/94 [1996] ECR I-1759). From the point of view of the ECHR system, the accession to the Convention of a non-state entity like the EU has been made possible thanks to the entry into force (June 2010) of Protocol XIV, amending Article 59(2) ECHR.

The EU accession to the ECHR will mark an important step in filling the gap of accountability for HR violations by public authorities in Europe. It is true that the protection of human rights in the EU legal order has significantly improved, especially after the Lisbon Treaty has given the EU Charter of Fundamental Rights the same legal value as the Treaties. However, no independent external control still exists over the acts, measures or omissions of the European Union. Moreover, the EU accession will likely contribute towards consolidating common ‘constitutional’ values in the European legal space, by strengthening the connection between the two courts in Strasbourg and Luxembourg.

Official negotiations for the elaboration of an international agreement on accession began in July 2010 between the European Commission and an informal working group of the Steering Committee for Human Rights (CDDH) of the Council of Europe. A Draft Accession Agreement was elaborated in July 2011. However, when the agreement was considered for adoption by the CDDH in October 2011, various states expressed a number of legal concerns and the European Commission noted that further debates were needed. After that, the negotiation process stalled for several months, as some EU member states (notably the UK and, to a lesser extent, France) contested the whole outcome. In June 2012 the accession talks between the Council of Europe and the European Commission were resumed and a **Revised Draft Agreement** was adopted in November 2012. This draft, which is reproduced here as an annex, constitutes the basis of discussion for further negotiations which are now underway.

One should note that, after the completion of the negotiation phase, the EU institutions, or one or more member states, will very likely seek an opinion from the CJ under article 218(11), on the compatibility of the accession agreement with EU primary law. Therefore, it is reasonable to think that the negotiation process will be completed not before 2014.

Some of the most controversial points in the negotiation process concern the so called “co-respondent mechanism”, intended to allow, subject to certain conditions, the joint participation of the EU and of one or more member state(s) in the same procedure. This mechanism has three main



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rationales: a) to give the EU an opportunity to participate in proceedings questioning the conformity with the ECHR of national measures that apply EU law, and conversely to allow member states to defend the conformity with the ECHR of a provision of the EU constitutive treaties; b) to ensure an effective enforcement of the Strasbourg judgments, by binding the contracting parties (EU or member states) empowered to modify the act at the origin of the violation found; and c) to preserve the autonomy of the EU legal order, both by avoiding interference by the ECtHR in the internal division of responsibilities between the EU and its member states, and by allowing the Court in Luxembourg to review the lawfulness of an EU act or omission according to EU law (and indirectly with the ECHR), before the ECtHR adjudicates on the conformity of the same act or omission with the ECHR.

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