

THE CHANGING EUROPEAN CONTEXT ON FUNDAMENTAL RIGHTS PROTECTION: THE ACCESSION OF THE EU TO THE ECHR

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Abstract

After negotiations between the Council of Europe and the European Union have successfully been concluded in April 2013, the EU accession to the Convention is now legally tangible and imminent. Notwithstanding any political obstacles, the Union will eventually become both the forty-eighth High Contracting Party and the first non-State signatory to the Convention. After more than thirty years of discussion, the adverse effects of two parallel and juxtaposed legal regimes will be overcome by the integration of the European Union into Strasbourg's human rights protection system, which means that divergences in human rights standards will expectedly cease to occur and that a greater degree of coherence in the field of human rights protection will be assured.

In the course of the *Kadi* case law, we can observe a changing appreciation of the rights enshrined in the ECHR, moving from dismissal to increased referencing to the ECHR and the case law emanating from Strasbourg. As is well-known, the judicial dialogue between the two courts has a long historical pedigree. Ever since *Nold*, the ECHR serves as a significant source of inspiration for the fundamental rights present in the EU legal order. However, a key development recently enhanced the relationship between the CJEU and the ECtHR. Already the Constitutional Treaty and the Lisbon Treaty afterwards made the accession of the EU to the ECHR an obligation for the EU. As a result of this development, it was foreseeable that the ECHR, instead of merely being a source of 'inspiration' for EU human rights law, would become binding upon the EU as a matter of law.

In this paper we argue that the Luxembourg—Strasbourg relationship is structurally conditioned by the looming accession of the EU to the ECHR. This helped tip the balance in favour of due process in both courts. Both the entire process of EU accession to the Convention and the Accession Agreement do, in fact, constitute a giant leap for European human rights. Accession will be a historic achievement and thus pivotal in overcoming existing incoherencies in the case-law of the ECJ and the ECtHR and in closing considerable gaps in the European system of fundamental rights protection.

Keywords: fundamental rights, accession of EU to ECHR etc.