



## Research Article

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# Relationship between the European Court of Justice and the European Court of Human Rights

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## Abstract

The focus of this article is to address the current relationship that exists between the European Court of Justice and the European Court of Human Rights referring to the legal provisions of the Lisbon Treaty on the accession of the European Union to the European Convention on Human Rights. Meanwhile, due to its importance, the content of the article will also address the relationship between these two important institutions of justice, in the interpretation of human rights and fundamental rights, as well as a description of the relationship between these two institutions after the accession of the European Union to the European Convention on Human Rights.

Referring to the provisions of the Lisbon Treaty, the not-too-distant future promises a possible accession of the European Union to the European Convention on Human Rights, in a situation where legal prerogatives are sanctioned both in this document and in the Treaty on the Functioning of the European Union.

This process has benefits and problems that may arise after the accession of the European Union to the Convention, which are of particular importance for the Union and in particular for the European Court of Justice, which will need to transfer part of its powers to the European Court of Human Rights, despite the fact that the delegation also has a very good impact on the treatment of fundamental human rights and freedoms, as we will discuss further in this paper.

**Keywords:** European Court of Human Rights, European Court of Justice, Treaty on the Functioning of the European Union, Accession to the ECHR, Treaty of Lisbon, fundamental rights, etc.

## 1. Introduction

The most important acts that provide and guarantee the fundamental human rights and freedoms in the EU are the Charter of Rights of the European Union and the ECHR. The Charter of Fundamental Rights of the European Union is one of the most important acts for the protection of fundamental rights for EU citizens. The

Charter did not aim to create new rights, but only to summarize in a single act the existing rights, previously defined in various international acts such as the ECHR or other Treaties and agreements of the Council of Europe.<sup>1</sup> The implementation of its provisions is within the jurisdiction and competence of the ECJ. In addition to the Charter, another early and very important act that laid the foundations for the protection of fundamental rights is the European Convention on Human Rights and Fundamental Freedoms, the application of which falls under the jurisdiction of the European Court of Human Rights. This Convention has been ratified by a large number of states, including all EU Member States.

Under these conditions, for EU member states there are two acts in force for the protection of fundamental rights. In this context, increasing knowledge of the common principles developed by the European Court of Justice and the European Court of Human Rights is not only desirable, but in fact essential for the proper national implementation of a key aspect of European human rights law and primarily of fundamental rights.

Consequently, one of the early issues of the Union was the accession of the EU to the ECHR. The discussion was further concretized with the adoption of the Lisbon Treaty.<sup>2</sup> This Treaty was the first to grant full legal personality to the EU, thus enabling the organization to sign international acts. The Convention was amended by Protocol No. 14, which entered into force in 2010, which provided for the possibility of accession of the EU to the Convention by amending Article 59 of the Convention. We are currently facing an unusual situation, where all EU member states, along with many other non-member states, have ratified the ECHR and are also members of the Council of Europe, but surprisingly, it is not understood why the EU, as an organization, still does not have the full will to be part to this international act.

## **2. ECJ & ECHR Report**

The ECJ and the ECHR have as a common meeting point the examination of issues related mainly to the implementation of fundamental human rights, which are sanctioned in the EU Charter of Fundamental Rights and the Council of Europe ECHR.

The Charter of Fundamental Rights of the European Union is a document adopted by the European Union that upholds and protects the fundamental rights of individuals within the EU. Its main aim is to ensure a high level of protection of human rights, ensuring that every person living in the EU enjoys a set of guaranteed rights. It was adopted on 7 December 2000 and entered into force on 1 December 2009, with the entry into force of the Lisbon Treaty. The Charter has binding legal status for the institutions of the European Union and the EU Member States, i.e., it has the same

<sup>1</sup> Article 51 of the Charter of Fundamental Rights of the European Union provides that: "The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union, with due regard for the principle of subsidiarity and to the Member States." only when they implement "Union legislation".

<sup>2</sup> Article 6/2 of the Lisbon Treaty provides that: "The Union shall accede to the Convention".

force as the Treaties,<sup>3</sup> except for those that do not implement EU law.<sup>4</sup> The EU Charter of Fundamental Rights came about as a necessity, as the treaties up until that point did not provide for specific regulations regarding fundamental rights and consequently these rights could not even enjoy judicial protection for European citizens.

The ECJ has a role in interpreting and applying the Charter, ensuring that the rights guaranteed by the Charter are respected by the EU Member States and the EU institutions. The ECJ is one of the main judicial bodies of the EU and works to ensure that EU law is applied equally and fairly in all Member States. The competences of this court extend to the field of disputes between the EU institutions, the Member States and the supervisory role regarding the respect of community acts and their implementation by all EU Member States. The majority of EU principles come precisely from the case-law of the ECJ, which contributes to the creation of law, respecting it, through the interpretation and application of the Treaties. All of this form what in legal terminology is called the "*acquis communautaire*".

With the creation of the European Community, the principles of fundamental human rights and freedoms were not sanctioned in any of the founding acts. This is probably due to the fact that the primary goal was the recovery of the economic situation after the Second World War. However, despite this, in the practice of the ECJ, fundamental human rights are reflected and supported as unwritten principles of primary Community law. Referring to the Strauder case vs. City of Ulm, the Court for the first time stated that fundamental rights are considered principles<sup>5</sup>

Also, in another ECJ decision,<sup>6</sup> the ECJ has consistently stressed the autonomy of "general principles" of law. These principles in themselves can be difficult to respect, as they exist only in the context of principles and not written norms. As a result, the need arose for the drafting and adoption of an act to enshrine fundamental rights and freedoms within the EU framework, such as the Charter of Fundamental Rights. We draw attention to the fact that some EU member states have ratified the ECHR, where the latter serves as a positive spirit for the understanding and implementation of human rights under EU activity, but was insufficient to ensure a qualitative protection of these rights within the EU. The ECHR therefore played a key role in the framework of fundamental rights in the EU. However, this role continued to remain after the adoption of the Charter, which was reflected in the fact that the EU treaties themselves sanction the obligation of the EU to accede to the ECHR. This was followed by amendments to the ECHR to accept the Union as an international organization that could accede to it.

The ECHR is a beacon of hope for all those citizens who feel that they have been denied justice in the courts at national level. The interpretation of the Convention by

<sup>3</sup> See Article 6 of the Treaty on the Functioning of the European Union, which provides: " 1. The European Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, adopted in Salzburg on 12 December 2007 , which shall have the same legal value as the Treaties. The provisions of the Charter shall in no way extend the powers of the European Union as set out in the Treaties."

<sup>4</sup> See Charter of Fundamental Rights of the European Union, Article 51.

<sup>5</sup> Case 29/69 Erich Stauder v City of Ulm.

<sup>6</sup> Case 11/70 International Handelsgesellschaft.

the ECHR in relation to the violation of fundamental rights has been a cornerstone for many EU countries that have signed it. In terms of jurisdiction, the Court examines complaints from member states and individuals in the event that another signatory state has violated its obligations under the ECHR. So, given that the Convention has been ratified by almost all EU member states, there have been disagreements about which court European citizens should turn to for violations of fundamental rights, emphasizing here that these rights are more broadly protected by the Convention itself. For this reason, there have been continuous efforts for the EU to accede to the ECHR, but so far, such a thing seems both simple and impossible.

### ***2.1 Current status of EU accession to the ECHR***

There have been many debates between the ECHR and the ECJ, regarding their early positions regarding fundamental rights. For a long time, EU accession to the European Convention on Human Rights was considered the best way out of this situation. However, the ECJ in its Opinion 2/94 held that, as Community law stood, the EU had no competence to accede to this Convention.<sup>7</sup> The Court held that although the protection of human rights was a prerequisite for the legality of EU acts, accession to the ECHR would require a fundamental change to the Union's current system for the protection of human rights, as it would bring the EU into a separate international institutional system and would also enable the transposition of all the provisions of the ECHR into the Union's legal order. With the adoption of the Maastricht Treaty, it can be stated for the first time the obligation to respect fundamental rights and freedoms under the European Convention on Human Rights.

In its practice, the ECJ, despite having acknowledged that it is not competent to assess whether the national rules of states are in compliance with the ECHR, it has stated that when these rules fall within the scope of community law and infringe fundamental rights, the ECJ assesses them by taking into account the standards established for these rights, also invoking the provisions of the ECHR as an act of specific, inspiring importance in this field.<sup>8</sup>

Also, in 2014, through Opinion 2/13, the ECJ<sup>9</sup> argued, among other things, that, since the European Union is not a state, since it does not have the characteristics of a state, the special characteristics of this organization must be considered. Under these conditions, the ratification of the ECHR would bring about the mandatory implementation of the acts issued by the bodies of the EC and the ECtHR. So, with this logic, the bodies of the European Union will also be subjects of external control and bodies that must implement the acts of the EC. Meanwhile, the jurisprudence of the ECHR will be binding for ECJ, the jurisprudence of the latter on the implementation of the Charter will not be binding on the ECHR. The ECJ has subsequently stated

<sup>7</sup> Opinion 2/94, see operative part , <https://curia.europa.eu/juris/liste.jsf?pro=AVIS&num=c-2/94> , accessed on 16.02.2025.

<sup>8</sup> Case C-260/89 Monomeles Protodikeio Thessaloniki – Greece Pg 41-45. View and Joined Cases C 402/05 P and C 415/05 P.

<sup>9</sup> Opinion, 2/13, dated 18.12.2014 <https://curia.europa.eu/juris/document/document.jsf?docid=160882&d oclang=EN> , accessed on 16.02.2025.

that the overlap of the legal orders of the EU and the EC may cause conflicts between them and again we do not have a regulation or norm that avoids this.

In this line, another issue raised by the ECJ on the issue of accession is that the recognition of the ECJ's right to refer cases to the ECtHR, under Protocol No. 16 to the ECHR (convention), may invalidate and discourage the pre-trial procedure before the ECJ, thereby undermining its autonomy and effectiveness in cases where the rights provided for by the Charter correspond to the rights provided for by the Convention.

So, in essence, the ECJ assessed that the draft agreement for the ratification of the ECHR by the EU is not in accordance with Union law. If we return to the first opinion given by the ECJ on accession to the Convention, it was foreseen that there are no legal prerequisites to make this process possible, changes to the treaties were needed for this to be achieved. At a time when these changes have been achieved, it seems difficult for the ECJ to agree to cede its competences in the field of human rights.

Of course, efforts continue and there is still work to be done by EU treaty drafters to enable ratification of the ECHR. Until then, it remains to be seen what norms will be envisaged to resolve the overlap and legal relationships that may be created between pre-trial cases that may be referred to the ECHR and those before the ECJ.

### **3. Innovations and issues of accession**

Accession to the Convention would bring about a fundamental change in the current Community system for the protection of human rights. This step would involve the EU in a special international institutional system, as well as the integration of all the provisions of the Convention into its legal order. Human rights in Europe would have a unified standard and the protection of fundamental rights would have a consolidated practice. This is because both courts in matters of fundamental rights have had their own practice, but in specific cases they also refer to each other's practice. In one of the cases related to the right to data retention, the ECJ, in addition to the postulate in the interpretation of Article 53 of the Charter,<sup>10</sup> mentions in its reasoning the practice of the ECtHR that has dealt with this aspect of the law.<sup>11</sup>

Meanwhile, in the practice of the ECtHR we find references not only to ECJ cases on the interpretation of the Charter, but also to the applicable law of the Union. In particular, the ECtHR has relied on the Charter to update the content of its rights, taking into account that the Charter is a recently adopted act and, as a consequence, on the practice of the ECtHR. Specifically, in the case of *Scoppola v Italy*,<sup>12</sup> the ECtHR

<sup>10</sup> Article 53 of the European Charter of Fundamental Rights provides that: " Nothing in this Act shall be interpreted as restricting or adversely affecting the fundamental rights and freedoms of man, as recognised in their fields of application by Community law , international instruments and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the constitutions of the Member States."

<sup>11</sup> Joined cases C-92/09 and C-93/09, accessible at the link : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0092>.

<sup>12</sup> Case of *Scoppola V. Italy* (No. 2), accessed on 20.05.2025: <https://hudoc.echr.coe.int/eng#%7B%22site>

reasoned that Article 7 of the Convention should be interpreted in such a way as to include the right to benefit from a lighter sentence provided for in a law after the commission of a criminal offence. Although the Convention was silent on this point, the ECtHR referred to the ECJ's decision in the Berlusconi case<sup>13</sup> and the fact that Article 49 of the Charter recognizes such a right.

With the EU's accession to the ECHR, the ECHR will be the final arbiter in cases based on the protection of human rights. EU institutions will be subject to the jurisdiction of the ECHR. This will solve the problem resulting from the fact that the EU cannot currently be a party to proceedings before the ECHR. All European legal systems will also be subject to the same legal network of supervision in relation to the protection of human rights. This means that the EU is not above the law, which would bring certainty to the Member States. Accession to the ECHR would enable a closer and more effective link between the EU Charter of Fundamental Rights and the ECHR, ensuring that EU legislation and the practices of the EU institutions are in line with international human right standards.

On the other hand, other consequences may also arise from this accession, such as who will be the jurisdiction that will have the last word on fundamental rights, or the fact that in conditions where the ECHR has jurisdiction only for the evaluation of the Convention, what will happen to those fundamental rights that are foreseen by the Charter in addition to the rights of the Convention? Therefore, the relationship between the ECJ and the ECHR will still have its own problems in the protection of fundamental rights after accession, but considering the prevalence of these rights against all the difficulties encountered in practice, reaching an agreement on the accession of the EU to the ECHR would be ideal since the ECHR will examine concrete cases, but based also on Union law.

#### **4. Conclusion**

In the continuation of their activity, it is observed that the ECJ and the ECHR have been based on each other's jurisprudence over the years, creating a mutual communication in the interpretation of human rights.

With the focus on protecting these rights, which is also the meeting point for both courts, as we analyzed above, accession to the ECHR remains a qualitative objective of the EU. This process, although it has advanced with cautious steps, has had some results, reflected in the changes that accompanied the EU treaties, the ECHR, but also the work of the EC and the Council of Europe to realize this process.

Despite the obstacles that seem to have been created by the ECJ, the work continues intensively. Considering that the ECJ has the right of "veto" in these cases, I estimate that the process may be more difficult than it seems.<sup>14</sup>

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<sup>13</sup> C.-387/02 - Berlusconi and Others <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-387/02> .

<sup>14</sup> Treaty on the Functioning of the European Union , Article 218/11 " A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to

Consequently, I believe that the most effective way to advance this agenda of objectives would be to concretize changes to the treaties, rather than continuing the current path, where each draft agreement will be subject to evaluation by the ECJ, from which it is not known whether we will be able to have a positive assessment of the case, or further delays.

## References

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European Charter of Fundamental Rights of the European Union;

European Convention on Human Rights;

Treaty on the Functioning of the European Union;

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Opinion 2/94 of the ECJ, Opinion under Article 228 of the EC Treaty, Accession of the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

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- Case 11/70 International Trading company ;

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<https://curia.europa.eu/juris/liste.jsf?language=en&num=C-387/02> .

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whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is unfavourable, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised. ”