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The accession of the European Union to the European Convention on Human Rights

I. INTRODUCTION

In Europe there are different systems of multilevel protection of human or fundamental rights: that of the European Union, that of the Council of Europe and that of each of the States party to both organisations.

The coexistence of these systems, and especially between the first two, did not take long to generate interferences, as both had the same objective: the protection of human or fundamental rights, albeit with different spheres of action.

But what is the European Convention on Human Rights? The European Convention on Human Rights or ECHR was adopted on 4 November 1950 by the Council of Europe and has, after the cessation of Russia in 2022, 46 Member States, 27 of which are also part of the European Union. This Convention establishes a catalogue of

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protection of human rights and fundamental freedoms.

Although the European Union had an objective of economic convergence at the time of its creation, throughout its evolution it has increased its objectives and competences accompanied by a need to protect the rights at stake within the framework of European Union law. It is in this context that its accession to the European Convention on Human Rights has been considered.

II. THE PROCESS OF EU ACCESSION TO THE ECHR

However, the move towards the accession of the European Union to the Convention has been a long one and has not yet been completed.

In 1990, the Commission issued a communication calling for accession. As a result, a first attempt was made, which concluded with the request and issuance of an opinion to the Court of Justice of the then European Community. The Court sought to answer the question of whether or not the Community had the competence to conclude such a treaty.

The Court proceeded to point out, in its Opinion 2/94, that nothing in the Treaty conferred on the Community the power to adopt international conventions in the field of human rights (para. 27).

It also concluded that such an amendment would be of constitutional significance, thus exceeding the limits set out in the Treaty, and could only be made by an amendment to the Treaty (para. 35).

Later, with the Treaty establishing a Constitution for Europe, which was never adopted, there was a first attempt to incorporate the mandate to accede to the Convention in its text. The Constitution expressly stated that "[t]he Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms", and that "[t]his accession shall not modify the competences of the Union as defined in the Constitution".

Following the well-known failure of its adoption, the Treaty of Lisbon was adopted years later, which reinstated this accession mandate in Article 6(2) of the Treaty on European Union.

Between the signing and the entry into force of the TEU - 13 December 2007 and 1 December 2009, respectively - the Parliamentary Assembly of the Council of Europe adopted its resolution 1610 of 2008 on the accession of the European Union to the European Convention on Human Rights. It noted *inter alia* that "non-accession has negative effects on the proper functioning of European

justice, as it jeopardises the coherence of the system of human rights guarantees in Europe" (para. 6).

The negotiation was essentially between the Commission (on the EU side) and a working group of the Human Rights Steering Committee (on the Council of Europe side). Between 2010 and 2013 they met thirteen times, resulting in five different drafts: one on an accession agreement, one explaining the accession agreement, one on the EU declaration, one on monitoring the enforcement of judgments, and a fifth in the form of a memorandum of understanding.

These were referred to the Court of Justice of the European Union to assess their compatibility with the EU Treaties, which issued its opinion in the well-known Opinion 2/2013.

In this opinion, the Court again considered that accession would not be compatible for various reasons. Among them, it considers that the draft accession does not establish a clear mechanism for coordinating the standards of protection of the European Convention on Human Rights and the Charter of Fundamental Rights of the Union. It also points out that accession would mean that states could sue each other before the European Court of Human Rights on matters of EU law, bypassing the Court of Justice of the European Union. He also

points to the problems that could arise from the European Court of Human Rights trying the Common Foreign and Security Policy. Finally, it is also worth noting the possibility that states that sign Protocol 16 to the Convention could request advisory opinions from the European Court of Human Rights and the problems that could arise with requests for preliminary rulings before the CJEU.

III. THE ACCESSION PROCESS TODAY

On 31 October 2019, the European Commission notified the Council of Europe of its willingness to resume negotiations. To this end, the Council of Europe proposed to create an ad hoc joint working group to the Human Rights Steering Committee known as the "47+1" group until 16 March 2022 when Russia was expelled; and since then, "46+1", bringing together representatives of the 46 States of the Council of Europe and the European Union. Since 2020, they have met thirteen times.

In a joint statement, the Secretary General of the Council of Europe and the Vice-President for Values and Transparency of the European Commission, stressed the crucial importance of the resumption of these negotiations to send a strong signal of the commitment of both organisations and

their members to the fundamental values on which they stand.

At the time of recording this video, the mandate of Article 6 of the Treaty on European Union has not yet been fulfilled, but the European Union and the Council of Europe continue to work towards this.



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