Savo Klimovski[*]
Tanja Karakamisheva-Jovanovska[**]

LEGAL OR PROCEDURAL "GAME" BETWEEN THE COURT OF JUSTICE OF THE EU (CJEU) AND THE EUROPEAN COURT OF HUMAN RIGHTS (ECTHR) IN THE PROTECTION OF FUNDAMENTAL RIGHTS?

Abstract

In its practice so far, the Court of Justice of the EU (CJEU) has two key sources of inspiration regarding the protection of fundamental rights: the first source is the constitutional traditions of the EU Member States, while the second one is the international agreements that protect human rights and freedoms, signed by the Member States of the Union. Although it is a question of two intertwined and interdependent sources, the CJEU still very often considers them separately on a case-by-case basis. In the legal argumentation, it is a fact that the EU Member States remain obliged to respect not only EU law, but also the UN human rights conventions, to take care of the application of the law of the Council of Europe, and in certain cases, the international customary law. There are strong arguments in support of this position in EU law as well. Therefore, the position of the EU is represented as a key factor in the respect of human rights and freedoms that directly derive from the UN Charter and from other UN conventions for the protection of human rights. In order to protect human rights from parallel multifacetedness that can lead to negative implications, the EU institutions, predominantly through the CJEU, cooperate with the competent institutions of the Council of Europe and the UN and, on a formal or informal level, accept the already established standards in the promotion and protection of human rights. In the paper, the emphasis of the analysis will be on explaining the phenomenology of this legal and/or procedural game that takes place at the institutional level with special reference to the principle of primacy and legitimacy. The basic hypothesis of the paper is that Europe has complex system of fundamental rights protection. It is a truly *"*crowded house*"*.[1]

[*] Savo Klimovski, PhD., Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law

[**] Tanja Karakamisheva-Jovanovska, PhD., Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, and Former Macedonian Member of the Venice Commission, e-mail: t.karakamisheva@pf.ukim.edu.mk

[1] P. Cruz Villalón (2012), '*Rights in Europe – The Crowded House*' King's College London – Working Paper. https://dokumen.pub/the-eu-charter-of-fundamental-rights-as-a-binding-instrument-five-years-old-and-growing-9781782258254-9781782258261-9781782258230.html (Accessed 2 March 2025).

Citizens and legal practitioners are confronted with different binding texts to be applied sometimes simultaneously, using different standards, structures, terminology and qualifications. These are domestic law, including in most cases the national constitution's fundamental rights, the European Convention on Human Rights and its protocols as well as EU law, in particular the EU Charter of Fundamental Rights. On the other hand, the EU Charter for fundamental rights and the general principles of Union law are the primary fundamental rights instruments when assessing EU law and national measures within the scope of application of EU law. In practice, there is an active dialogue and a high degree of consensus among European and highest national constitutional and supreme courts on protection of human rights.

Key words: human rights, protection, CJEU, ECtHR, Charter, UN, Council of Europe, constitution

I. Introduction

The relationship between the CJEU and the ECtHR in the protection of fundamental rights can be characterized as a complex legal "game" or legal "dialogue". Both courts have a shared goal of protecting human rights, but their differing legal frameworks and jurisdictional boundaries sometimes result in tension. While there are instances of conflict, there are also significant moments of cooperation and mutual respect, especially as the two courts navigate the interplay between EU law and the European Convention on Human Rights. The CJEU has developed an impressive body of fundamental rights case-law by emphasizing the autonomy and primacy of the EU's legal system of human rights protection. This Court has consistently reinforced the primacy of EU law over national law with principle established in landmark cases such as *Costa v. ENEL* (1964)[2]. These cases ensures that EU legal norms take precedence over conflicting national legal provisions, including those relating to human rights. The adoption of the *Charter of Fundamental Rights of the European Union* in 2000[3] marked a significant step forward. The Charter enshrines a broad range of civil, political, economic, and social rights. The CJEU plays an essential role in interpreting and applying these rights, ensuring their consistent protection across the Union. In particular, since the EU Charter became binding under EU law, there is a trend in the CJEU case law to focus exclusively on the Charter. The fact that the CJEU focuses on the EU Charter is not objectionable. What can be objected to would be an approach to treat the EU Charter as the only source of fundamental rights within the EU's legal order, to the

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006 (Accessed 5 March 2025).
[3] https://www.europarl.europa.eu/charter/pdf/text_en.pdf (Accessed 2 March 2025).

exclusion of all other rights of international or national origin. The CJEU interprets fundamental rights in isolation from the jurisprudence of other human rights instruments, including the ECHR. This is rather surprising given that the Charter itself prescribes that those Charter rights that correspond to rights guaranteed by the ECHR are to be given the same meaning and scope as those laid down by the ECHR (article 52 (3) of the Charter). It is encouraging that the CJEU reaffirmed these important principles in recent Court judgments. However, the EU Court declines to enter into arguments drawn from the ECHR and the Strasbourg Court's case-law, arguing that the ECHR "*does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into European Union law." Consequently, European Union law does not govern the relations between the ECHR and the legal systems of the Member States, nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law.*"[4]

This approach is in rather sharp contrast to the ECtHR opinion to choose wherever possible an interpretation of the ECHR that is not only compatible with, but even conducive to a proper application of EU law by national authorities. The main purpose of fundamental rights is not to foster harmonization or uniformity; this is not the crucial point. The purpose of fundamental rights is to empower individuals, to give them more liberty and to protect them from the state arbitrariness' and other authorities power of discretion. While the question of whether the EU is directly bound by the provisions of legal acts that are part of international law concerning human freedoms and rights is still being debated with certain reservations and differing opinions, most analysts focus on the extent to which the EU is obligated to respect international norms for the protection of human freedoms and rights.[5]

International law for the protection of human freedoms and rights is mainly considered through the lens of the ECHR, and the extent to which the provisions of the Convention shape part of the EU's domestic legal order (through the "general principles of law" and Article 6 of the EU Treaty), as well as the legal weight of the Charter of Fundamental Rights, rather than through the obligations the EU directly undertakes from international law. Despite the fact that the CJEU lacks a certain connection with international human rights law as a source of obligations for human

---

[4] J.H.H. Weiler (1995) 'Fundamental Rights and Fundamental Boundaries: On Standards and Values in the Protection of Human Rights', reprinted in J. H. H. Weiler (1999) *The Constitution of Europe: do the New Clothes Have an Emperor? And other essays on European integration* (Cambridge University Press), pp. 107-116.

[5] https://www.coe.int/en/web/dlapil/speeches-of-the-director/-/asset_publisher/ja71RsfCQTP7/content/europe-s-multi-layered-human-rights-protection-system-challenges-opportunities-and-risks#_ftn2 (Accessed 30 January 2025).

freedoms and rights, from the perspective of international law, the EU is treated as a political system *sui generis*, subject to international law. In the decisions of international judicial bodies, as well as in the works of legal scholars dealing with international law issues, it is generally accepted that organizations, including the EU, are subject to international law. In this regard, the opinion of *Wellens* is also relevant, who states that "it would be incorrect to assume that the conduct of international organizations themselves avoids the governance of the overall international political and legal order... And there is an increasing awareness that international organizations must account for how they adopt their acts, how they undertake actions and obligations."[6]

This position practically ensures the obligation of states to apply international law. Regarding the United Nations, *White* will write: "The legal foundations on which human rights are applicable to all activities of the United Nations can be drawn, first and foremost, from the inferential nature of human rights. Human rights are part of every human being, and precisely because of that, these rights are automatically part of the legal framework applicable to all those who have the power to influence or threaten the enjoyment of these rights. Second, the United Nations is composed of states that are responsible for respecting human rights law. States cannot independently, as autonomous international subjects, establish mandatory standards for the protection of human rights."[7] There is an accepted view that international legal obligations can arise from the treaties of an organization to which a state has become a member, or according to international customs law, including *jus cogens* rules, which can declare invalid any treaty rules that are contrary to international law. It is interesting to note that the *International Court of Justice (ICJ)* considers that "rules relating to the fundamental rights of the individual" in international law have *erga omnes* nature. They are, or should be, "the concern of all states." In light of the significance of human rights, all states have a legal interest in their protection. The EU member states are subject to a full spectrum of obligations for the protection of human rights arising from the UN Charter, as well as from other key documents dedicated to the protection of human rights adopted by the UN. These instruments provide protection for the fundamental and inviolable rights of all citizens within the jurisdiction of the member states.

On the other hand, the CJEU had affirmed the principles of direct effect and of primacy of European law, but refused to examine the compatibility of decisions

[6] Tawhida Ahmed, Israel de Jesús Butler (2006), The European Union and Human Rights: An International Law Perspective, *European Journal of International Law*, Volume 17, Issue 4, 1 September, pp. 771–801, https://doi.org/10.1093/ejil/chl029.

[7] https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law (Accessed 12 February 2025).

with the national and constitutional law of Member States[8] certain national courts began to express concerns about the effects such case-law might have on the protection of constitutional values such as fundamental rights. If European law were to prevail even over domestic constitutional law, it would become possible for it to breach fundamental rights. To address this theoretical risk, in 1974 the German and Italian constitutional courts each adopted a judgment in which they asserted their power to review European law in order to ensure its consistency with constitutional rights.[9] This led the CJEU to affirm through its case-law the principle of respect for fundamental rights, by stating that fundamental rights are enshrined in the general principles of Community law protected by the Court.[10] These are inspired by the constitutional traditions common to the Member States[11] and by international treaties for the protection of human rights to which Member States are parties[12] one of which is the ECHR.[13]

II. The CJEU and the ECtHR scope of the fundamental rights protection

Generally speaking, the CJEU primarily focuses on interpreting EU law and ensuring its consistent application across EU Member States. Its task is to protect fundamental rights within the scope of EU law, which is largely based on the Charter of Fundamental Rights of the EU.

The ECtHR, on the other hand, is responsible for interpreting the European Convention on Human Rights, which is a separate legal system established by the Council of Europe safeguarding the civil and political rights of individuals within the member states of the Council of Europe, which includes most EU member states.

The EU Charter, and Article 6 TEU sets out fundamental rights within the EU legal framework. The CJEU is tasked with ensuring these rights protected under EU law. However, the EU Charter is not meant to replicate the ECHR, and the rights contained in the Charter are focused on EU-specific issues. The ECHR offers a broader protection of human rights that extends beyond EU law and also includes social, economic, and cultural rights, which are not covered by the EU Charter. This creates a complex legal terrain where an individual could claim a violation of rights under both systems, leading to potential conflicts or synergies between the two courts. The CJEU has jurisdiction over EU law, including the interpretation and

[8] Stork, case 1/58; Ruhrkohlen-Verkaufsgesellschaft, joined cases 36, 37, 38-59 and 40-59
[9] Solange I; Frontini.
[10] Stauder, case 29-69
[11] Internationale Handelsgesellschaft, case 11-70) a
[12] Nold, case 4-73
[13] Rutili, case 36-75

application of the EU Charter of Fundamental Rights, but its jurisdiction is limited to EU law matters.

In contrast, the ECtHR has jurisdiction over all matters related to the ECHR and can adjudicate cases concerning fundamental rights violations across the Council of Europe member states. Mentioned overlap often leads to questions about the relationship between rulings from the CJEU and the ECtHR. For instance, if an individual in an EU member state believes their rights under the ECHR have been violated by an EU law, they could first seek a ruling from the CJEU and then bring a case to the ECtHR. This situation sometimes leads to procedural issues as both courts may issue different or even contradictory judgments on the same issue.

While this overlap creates the potential for a "legal game," it is often better understood as a "dialogue" between the two courts, where they work toward ensuring that fundamental rights are respected in a complementary manner. The CJEU generally sees itself as the final arbiter of fundamental rights protection in the EU legal order, as seen in the case of *Maastricht Treaty* and the rulings concerning the EU Charter's binding effect. However, it acknowledges the ECtHR's role and has historically referred to ECtHR judgments for guidance on the interpretation of fundamental rights. The ECtHR has recognized the importance of the EU legal order and has stated that the EU must respect the rights guaranteed by the ECHR, especially when the EU is acting within its competencies. The ECtHR sometimes refrains from ruling on issues already dealt with by the CJEU, respecting the latter's jurisdiction over EU law. There have been cases where the two courts' rulings diverge, creating tension.

For instance, in *Kadi v. Council of the European Union (2008)*[14], the CJEU ruled that EU law could override UN Security Council sanctions if they violated fundamental rights, even if the ECtHR had already held that the UN measures complied with the ECHR. The case involved a challenge to a UN Security Council sanctions regime that imposed asset freezes and travel bans on individuals suspected of links to terrorism (in this case, Mr. Kadi, a Saudi Arabian national, and others). These sanctions were imposed under UN Security Council Resolution 1267 (1999), which was incorporated into EU law by EU Regulations. The sanctions had been implemented without providing the targeted individuals with an effective means of challenging them before an independent tribunal. Mr. Kadi and others challenged the sanctions before the CJEU, arguing that the measures violated their fundamental rights, particularly their right to due process and their right to property, as protected under the EU Charter of Fundamental Rights and general principles of EU law. The CJEU ruled that even though the UN Security Council resolutions (including those imposing sanctions) had been adopted under Chapter VII of the United Nations Charter and were binding on all UN member states,

[14] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62005CJ0402 (Accessed 2 March 2025).

including EU member states, EU law required compliance with fundamental rights within the EU legal order.

The CJEU held that the EU legal order was not simply a passive entity to implement UN resolutions without regard to its own legal principles. The EU, as a legal order, must ensure respect for fundamental rights, including the right to defense, the right to a fair hearing, and the right to an effective remedy. The CJEU emphasized that even when the EU implements UN sanctions, it must ensure that they respect fundamental rights, particularly those enshrined in the EU Charter. In this case, the Court found that the asset freeze imposed on Kadi and others violated the right to an effective remedy, as they had no means to challenge the sanctions before an independent tribunal. The CJEU acknowledged that UN Security Council sanctions under Chapter VII of the UN Charter are binding, but the Court maintained that this does not grant the EU a blanket exemption from its own legal obligations. In particular, the EU institutions are bound by the fundamental rights guaranteed by the EU legal order, and those rights must be upheld even when implementing UN Security Council decisions. In this case, there was a notable divergence with the ECtHR, which had upheld the compatibility of the UN sanctions with the ECHR.

The ECtHR had previously ruled in other cases, such as *Al-Dulimi v. Switzerland (2016)*[15], that international obligations under the UN Security Council could override individual rights under the ECHR, provided certain conditions were met. The case concerned Mr. Al-Dulimi, an Iraqi national, who was subject to a UN Security Council sanctions list under Resolution 1483 (2003), which was passed in the wake of the Iraq war. This resolution imposed financial sanctions (asset freezes) and travel bans on individuals and entities associated with the regime of Saddam Hussein. Mr. Al-Dulimi was included on this sanctions list and, as a result, his assets in Switzerland were frozen. He challenged the sanctions, claiming that the freezing of his assets violated his right to property (under Article 1 of Protocol 1 of the ECHR) and his right to an effective remedy (under Article 13 of the ECHR), because he was not given the opportunity to contest his designation before an independent tribunal. The case raised the issue of how UN Security Council resolutions interact with the ECHR and the rights of individuals. The sanctions imposed on Al-Dulimi were based on a UN Security Council resolution, and thus the Swiss government argued that it was obligated to implement those sanctions under international law. The applicant argued that the asset freeze violated his right to property, as it was imposed without any effective way for him to challenge the decision. He also claimed that the inability to contest the sanctions before a Swiss court violated his right to an effective remedy under the ECHR. In its judgment, the ECtHR ruled against Mr. Al-Dulimi and held that Switzerland's

[15] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-164515%22]} (Accessed 7 February 2025).

compliance with UN sanctions did not violate his rights under the ECHR, even though he was not given an effective remedy or the opportunity to challenge the sanctions in domestic courts.

The ECtHR acknowledged the primacy of international law, particularly the UN Security Council's role under the UN Charter. The Court held that the UN Security Council resolutions imposing sanctions are binding on all UN member states, including Switzerland. Therefore, Switzerland was obliged to implement those sanctions, even if they potentially interfered with individual rights. The ECtHR found that the asset freeze did interfere with Mr. Al-Dulimi's right to property under Article 1 of Protocol 1 of the ECHR, which guarantees the protection of property. However, the Court concluded that this interference was justified under the "public interest" and "national security" exceptions allowed by the ECHR, especially given the international community's efforts to combat terrorism and prevent the financing of terrorist activities.[16] Mr. Al-Dulimi also claimed that he was not afforded an effective remedy under Article 13 of the ECHR, which guarantees access to an effective remedy before a national authority. The Court acknowledged that there was no domestic process available to him in Switzerland to challenge the sanctions directly. However, the ECtHR ruled that in this case, the lack of an effective remedy was justified because Switzerland's obligation to implement the UN sanctions under international law outweighed the need for an individual remedy. The Court also pointed out that while individuals have rights under the ECHR, these rights are not absolute and can be restricted in certain circumstances, particularly when there is a conflict with international obligations aimed at ensuring international peace and security. The effective remedy under Article 13 was not considered applicable in this case because the international obligations imposed by the UN took precedence.

In other words, the Court balanced the individual's rights against the need for the state to comply with international sanctions. The Al-Dulimi ruling illustrates the ECtHR's approach to balancing human rights with international law obligations. The Court placed significant weight on Switzerland's international obligations under the UN Charter, which led to a deference to UN Security Council resolutions even when they conflicted with certain ECHR rights. The decision reinforced the idea that UN Security Council resolutions, especially those relating to sanctions, cannot be easily challenged on human rights grounds in the ECtHR. This case reflects the political nature of international sanctions and the difficulty of reconciling them with the protection of individual rights. The case underscores the difficulties in reconciling individual rights with international obligations, particularly in the context of counterterrorism measures and sanctions. It also

[16] Tatiana Soldanescu (2022), The ECtHR faced with U.N.S.C. chapter VII resolutions containing measures in contradiction with the ECHR. Paix et sécurité européenne et internationale. ffhalshs-03591803 https://shs.hal.science/halshs-03591803v1/document (Accessed 7 March 2025).

demonstrates the tension between human rights protection and the need for international cooperation in maintaining global security.

On the other side, the CJEU took a more restrictive view in Kadi, asserting that the EU legal order could not allow a violation of fundamental rights, even in the context of international obligations. The CJEU's judgment emphasized the autonomy of the EU legal system and its commitment to fundamental rights, which it deemed non-negotiable. The *Kadi decision* is significant because it asserted the autonomy of EU law in relation to international law, specifically UN Security Council sanctions. It reaffirmed that the EU's duty to protect fundamental rights within its legal order takes precedence over international obligations, even in situations where the UN Security Council resolutions conflict with those rights. The judgment highlighted the importance of judicial review within the EU legal system, ensuring that individuals targeted by sanctions have access to legal remedies and due process.

Another example is *Luisiana Bialowas v. Poland (2018)*, which involves a decision by the ECtHR**,** primarily focuses on the issue of environmental protection and the right to an effective remedy in the context of Poland's controversial actions in the Białowieża Forest.[17] The Białowieża Forest is one of the last and largest remaining parts of the primeval forest that once spread across the European Plain. It is a UNESCO World Heritage site and protected under both EU environmental law and the Council of Europe's Bern Convention for the protection of wildlife. In 2016, the Polish government decided to increase logging in the Białowieża Forest, citing the need to combat a bark beetle infestation that was damaging the trees. However, this decision was met with strong opposition from environmental groups, scientists, and the European Union, which argued that the logging was illegal and endangered the forest's biodiversity. The applicants, including environmental activists such as Luisiana Bialowas, argued that the Polish government's actions violated environmental protections, specifically regarding logging in the Białowieża Forest, which was part of a protected natural area under EU law.[18] The applicants claimed that they were denied the right to an effective remedy, meaning they could not challenge the logging activities in the national courts, despite their concern over the destruction of an ecologically significant site. In its ruling, the ECtHR found that Poland had violated Article 13 (Right to an effective remedy) in conjunction with Article 8 (Right to respect for private and family life, home, and correspondence) of the ECHR. The Court concluded that Polish courts had not provided an effective legal remedy to challenge the government's controversial logging operations in the Białowieża Forest. The ECtHR emphasized that the

[17] https://ios.edu.pl/wp-content/uploads/2022/01/Zalacznik-nr-1-Plik-nominacyjny-2014.pdf (Accessed 2 March 2025).

[18] https://verfassungsblog.de/bialowieza-forest-the-spruce-bark-beetle-and-the-eu-law-controversy-in-poland/ (Accessed 8 March 2025).

applicants were not provided with sufficient judicial recourse to challenge actions that could significantly affect the environment and their quality of life. It also noted that the failure to properly safeguard the forest's protection under both Polish and European law amounted to a violation of their rights.

The European Commission initiated legal proceedings against Poland in 2017 based on violations of EU environmental law, specifically related to the Habitats Directive and the Environmental Impact Assessment (EIA) Directive. The Białowieża Forest is part of the Natura 2000 network, which is a network of protected areas under the Habitats Directive. The European Commission argued that Poland's decision to significantly increase logging in the forest violated the Habitats Directive because the logging was taking place in a protected area without proper consideration of its environmental impact on the ecosystem, which includes rare and endangered species like the European bison. The EIA Directive requires that certain public and private projects undergo an assessment to evaluate their potential significant effects on the environment before being approved. In April 2018, the CJEU ruled in favor of the European Commission and found that Poland had violated EU law. The court concluded that Poland had failed to take appropriate measures to protect the natural habitats of the Białowieża Forest, including species listed under the directive, and that the logging posed a risk to the forest's biodiversity.[19] The court also found that Poland had not carried out a proper Environmental Impact Assessment for the logging activities, which is required for projects that could have significant environmental effects. As a result, Poland was ordered to immediately halt the large-scale logging activities in the forest. The ruling was a significant victory for environmental protection and reinforced the EU's commitment to preserving biodiversity within the Natura 2000 network. Following the CJEU ruling, the Polish government was required to suspend the logging activities in the Białowieża Forest. However, the case highlighted the tension between national sovereignty and the EU's environmental obligations, as well as the political and legal conflicts within Poland regarding environmental protections. The case also had broader implications for environmental governance within the EU, reinforcing the importance of compliance with EU environmental law and the preservation of natural habitats across Europe. It illustrated how EU law can be an effective tool in holding member states accountable for failing to protect the environment in line with European standards.

[19] https://curia.europa.eu/juris/liste.jsf?num=C-441/17 (Accessed 4 February 2025).

III. The EU Charter for fundamental rights and the EU law general principles

One needs to make a general division between the fundamental rights on one hand, and all other rights on the other, and to answer the question whether all fundamental rights can be subject of analysis? It is a fact that there is only one area, more specifically the Article 52 and the Article 53 of the EU Charter on Fundamental rights through which the EU law limits its own autonomy, having in mind the fact that these rights are directly "borrowed" from the ECHR.

The provision reads: *"When the Charter contains rights that correspond directly with the ECHR, the meaning and the scope of these rights remain the same as those determined in the ECHR. This provision does not obstruct the EU law to provide more extensive protection."* According to this provision, the Charter calls on the Convention when determining the minimum level of protection of the determined rights, whereas the EU law agrees that it should not read this right completely autonomously and should indirectly rely on the ECHR. In this limited space, the issues under the scope of the EU law can at the same time be issues under the Convention and *vice versa*. There are two possible scenarios for this situation.[20]

The first scenario is that in all cases where the Article 267 of the TFEU is applied there is no direct threat for the autonomy of the EU law, having in mind the fact that this provision protects the CJEU monopoly *vis-à-vis* the EU law, including the protection of the fundamental rights with the EU law. On the other hand, in exceptional cases when this provision is not applied and when the ECHR is called to give an advisory opinion, and if the ECHR accepts to give this opinion, this by definition will be taken as "a principal issue related with the reading and the application of the rights and freedoms defined with the Convention and its protocols."

It is quite logical for the national courts of the EU member states to be appropriately reminded of their obligations coming from the Article 267 of the TFEU when they apply the Protocol 16, but also of the supreme autonomy of the CJEU, when it comes to the reading of the EU law. Still, should this happen, the compulsory legal restrictions for the use of this Protocol will be considered disproportionate and unjustified. They can be a threat for the future development of the system of the Convention as whole, much more than the Protocol can serve as a threat for the autonomy of the EU Law. This is considered the opposite from what is expected, that this is a purely internal issue for the EU Law. There is a

[20] Tanja Karakamisheva-Jovanovska, The European Convention of Human Rights and the EU – Situations, Dilemmas, Challenges,https://www.academia.edu/21547044/THE_EUROPEAN_CONVENTION_OF_HUMAN_RIGHTS_AND_THE_EUROPEAN_UNION_SITUATIONS_DILEMMAS_CHALLENGES_ (Accessed 6 March 2025).

hesitation among the CJEU judges on the aggressive line of asking questions about the Protocol 16, which is in fact an alibi that should be used when explicitly saying that the draft-accession agreement is incompatible with the EU legal autonomy. This situation, according to many experts, is used as an exit strategy, as an argument for the CJEU to reject the draft-accession agreement.[21] On the other hand, there are still plenty of reasons why the CJEU should support the revised draft-agreement. In this sense, it is unclear whether the correspondent procedure, as an early mechanism, cannot be applied when it is asked from the ECHR to give a preliminary opinion on a specific case. The Union will be allowed to become co-respondent in cases, which entails both the right to participate in the procedure before the ECtHR, and the right to make use of the "prior involvement" procedure. If the domestic court does not ask the ECtHR for a second preliminary opinion, an individual losing party may submit an application to the ECtHR. Before the ECtHR, the Union would certainly be allowed to act as co-respondent, but the CJEU would not have a right to prior involvement.

The EU Charter for fundamental rights and the general principles of Union law are the primary fundamental rights instruments when assessing EU law and national measures within the scope of application of EU law. In practice, through the years, we witness active dialogue and a high degree of consensus among European and highest national constitutional and supreme courts on protection of human rights. The CJEU has developed an impressive body of fundamental rights case-law. Particularly important examples are judgments on data protection, such as so-called *Google* case and *Schrems* case. In the past, the CJEU fundamental rights' case-law has drawn extensively on the ECHR and on the case-law of the ECtHR. At the same time, the Court has consistently emphasized the autonomy and primacy of the EU's legal system of human rights protection. In particular, since the EU Charter became binding under EU law, there is a trend in the CJEU case law to focus exclusively on the Charter. The fact that the CJEU focuses on the EU Charter is not objectionable. What can be objected to would be an approach to treat the EU Charter as the only source of fundamental rights within the EU's legal order, to the exclusion of all other rights of international or national origin.

It has been observed that the CJEU interprets fundamental rights in isolation from the jurisprudence emerging from other human rights instruments, including the ECHR. This is rather surprising given that the Charter itself prescribes that those Charter rights that correspond to rights guaranteed by the ECHR are to be given the

[21] Final consolidated version of the draft accession instruments as provisionally approved by the 46+1 Group at its 18th meeting, 46+1(2023)36 of 17 March 2023, available at: Council of Europe, 'Final Consolidated Version of the Draft Accession Instruments' (17 March 2023). rm.coe.int.

same meaning and scope as those laid down by the ECHR (article 52 (3) of the Charter). The recently revised draft agreement on the EU's accession to the ECHR is a significant step toward improving human rights protection within the EU framework. The key change in the new agreement is the procedural mechanism in Article 3(7), which ensures that the CJEU can assess whether EU actions comply with the ECHR before those actions are examined by the ECtHR**.** This is designed to maintain the EU's legal autonomy while aligning with the ECHR's human rights standards. As of March 2025, the process of EU accession to the ECHR is still in progress, pending final approval from both EU institutions and Council of Europe member states. Once this process is finalized, individuals will gain the ability to challenge the actions of EU institutions directly before the ECtHR, which is expected to increase the accountability of the EU in matters of human rights. This move would further integrate human rights into EU law, making the EU more aligned with the ECHR standards, and offering individuals a higher level of protection. It will bring the EU closer to full integration into the broader European human rights framework, strengthening the protection of individual rights across the Union. One of the most important aspects of this agreement is that it allows for greater scrutiny of EU actions in terms of human rights, ensuring that the EU's legal system aligns with the standards set by the ECHR. With the EU becoming subject to the jurisdiction of the ECtHR, individuals will have an additional avenue for challenging violations of their rights that might be caused by EU institutions.

IV. Key challenges in the human rights protection "game"

The challenges in human rights protection between the CJEU and ECtHR largely stem from differences in jurisdiction, legal frameworks, and interpretive approaches. While both courts share the goal of protecting human rights, their differing mandates and legal structures have sometimes led to conflicting rulings and a lack of coordination. These challenges require careful balancing to ensure that individuals' rights are protected consistently across Europe, and greater cooperation and dialogue between the two courts may be necessary to address these complexities. The relationship between the ECtHR and the CJEU in the protection of human rights presents several challenges that stem from differences in their legal mandates, judicial approaches, and jurisdictional overlap. Both the ECtHR and the CJEU deal with fundamental rights but under different legal frameworks and different judicial philosophies, which can lead to contrasting interpretations of human rights standards. The CJEU tends to focus on EU law's primacy and its internal consistency, particularly regarding the internal market and other aspects of EU integration. This sometimes results in decisions where fundamental rights are interpreted within the context of EU legal goals (such as economic integration or harmonization of laws). On the other hand, the ECtHR interprets the ECHR more

flexibly, with an emphasis on individual rights protection, often allowing broader interpretations to safeguard rights and freedoms. Its approach to rights protection can sometimes be seen as more expansive and adaptive to evolving societal norms.[22]

While both courts have sometimes engaged in dialogue, the CJEU referring to ECtHR case law, there is no formalized mechanism for cooperation or coordination between the two courts. As a result, overlapping jurisdiction can lead to different decisions on similar human rights issues. Preliminary references have allowed the CJEU to take into account the ECtHR's rulings in some cases, but there is no structured procedure for ensuring that both courts coordinate their approaches to fundamental rights issues in a consistent way. National courts are often caught in the middle of the jurisdictional overlap between the CJEU and the ECtHR, especially when a case involves both EU law and human rights protections under the ECHR. These courts may need to choose between CJEU and ECtHR rulings, which can create legal uncertainty for individuals seeking protection of their rights. For example, a national court may be uncertain whether to prioritize the CJEU's interpretation of EU law over the ECtHR's interpretation of human rights law, or *vice versa*. This can lead to inconsistent application of rights protection within the same legal system. As both courts interpret human rights law within different frameworks, there is the potential for divergent case law. In some instances, the CJEU has interpreted human rights protections more narrowly than the ECtHR, which could result in a weaker level of protection for individuals in the EU compared to what they might expect under the ECHR. The CJEU's ruling in the *Digital Rights Ireland case (2014),* which declared the EU Data Retention Directive invalid for violating the Charter of Fundamental Rights, was seen by some as a more stringent human rights protection than what was previously guaranteed under ECtHR jurisprudence. There's no mandatory consultation, and national courts may find themselves interpreting conflicting jurisprudence from the two courts without guidance on how to reconcile them. The CJEU and the ECtHR follow separate procedural rules, and while they sometimes refer to each other's case law, they are not required to follow each other's decisions. This lack of formal coordination can lead to different interpretations of similar issues, creating confusion for national courts, as they must decide which court's ruling to prioritize in case of conflicting guidance.

Regarding interpretative approach the ECtHR adopts an evolving, dynamic approach to interpreting the Convention. It often uses the "living instrument" doctrine, meaning that it interprets the Convention in light of contemporary standards and societal developments. This allows the Court to adapt the

[22] Marten Breuer, 'No Donum Danaorum! A reply to Daniel Thym's "A Trojan Horse?"',*VerfBlog*, 2013.9,16. http://www.verfassungsblog.de/en/no-donum-danaorum-a-reply-to-daniel-thyms-a-trojan-horse/ (Accessed 6 March 2025)

interpretation of rights to modern circumstances, even though the text of the ECHR has not changed since its adoption. On the other hand, the CJEU uses an autonomous interpretation approach, meaning that it interprets EU law based on its own legal principles and the objective of ensuring uniform application of EU law across member states. The CJEU also uses principles such as teleological interpretation (interpreting laws in a way that aligns with the objectives of the treaties) and primacy (EU law takes precedence over national law).

Although the ECtHR is a supranational court whose decisions are binding on the states that have ratified the ECHR. However, the Court does not have the same direct enforcement mechanisms as the CJEU. It provides judgments that often result in recommendations or obligations for states to change their laws or practices, but the enforcement of such decisions relies on political and diplomatic means. On the other side, the CJEU has a more direct role in ensuring that EU law is applied uniformly and effectively across member states. Its rulings are binding on EU institutions and member states. Through the preliminary ruling procedure, national courts can refer questions about the interpretation of EU law to the CJEU, ensuring that EU law is interpreted consistently across the Union.[23]

Human rights protection is central to the ECtHR's mission. While the Court's focus is on the protection of civil and political rights, it also deals with cases involving social and economic rights under certain circumstances. The ECtHR often takes into account national practices and tries to balance the rights of individuals with the interests of the state. The CJEU also plays a role in human rights protection, particularly in cases where EU law intersects with fundamental rights. The EU Charter of Fundamental Rights provides a comprehensive framework for human rights within the EU. However, the CJEU's primary focus is on ensuring that EU law is applied and interpreted consistently, with human rights protection often being a secondary consideration. The ECtHR often draws on international law and European consensus when interpreting the ECHR. The Court frequently considers the practices of EU member states and non-EU countries to determine whether a violation of human rights exists.

It may also refer to decisions of other human rights bodies such as the UN Human Rights Committee. The CJEU tends to rely more on the internal sources of EU law, such as the EU treaties, regulations, directives, and established case law. However, it may also consider international human rights treaties and case law, especially when interpreting provisions of the EU Charter of Fundamental Rights. The ECtHR operates under the principle of subsidiarity, meaning it generally acts as a last resort after all domestic remedies have been exhausted. It intervenes only

[23] Alexandros-Ioannis Kargopoulos (2015), ECHR and the CJEU Competing, overlapping, or Supplementary Competences?, Published in printed, Issue 3/2015, pp 96 – 100. https://eucrim.eu/articles/echr-and-cjeu/ (Accessed 10 March 2025).

when national authorities fail to adequately protect human rights. While subsidiarity is a key principle in the EU's legislative framework (especially in areas like subsidiarity in the division of powers between the EU and member states), it is less directly relevant to the CJEU's interpretative role. The Court's focus is more on ensuring the uniform application and supremacy of EU law within the scope of EU member states.

While both courts interpret legal texts with the goal of protecting fundamental rights and ensuring legal coherence, their approaches differ due to their distinct legal bases, jurisdictions, and mandates. The ECtHR tends to use a more flexible, evolving approach to human rights protection, reflecting changes in societal values, while the CJEU emphasizes legal consistency within the framework of EU law and the principles of EU integration. In the case *OCI v. Romania*[24] an outstanding divergent interpretation is present between the two courts. As previously mentioned, according to the ECtHR, mutual trust does not mean that a State is obliged to send back a child to a situation where they run a grave risk of facing an abusive situation. By doing so, a High Contracting Party may incur in a violation of art. 8 ECHR, even if it acts pursuant to mutual trust requirements deriving from EU law.[25]

This is in stark contrast with the approach taken by the CJEU in cases such as *Aguirre Zarraga v. CJEU (2010)*[26], similarly concerning the return of a child following a certified judgment ordering their return. Here, the CJEU stressed that, on the basis of mutual trust, it was not for the State executing another State's judgment to check whether the procedure in the issuing Member State was "vitiated by an infringement of the child's right to be heard". Stressing the exceptionality of lawful distrust, the CJEU ruled that, based on mutual trust, the Member State of enforcement cannot oppose the enforcement of a certified judgment ordering the return of a child on the ground that a fundamental right was breached. Comparing these two cases, it is clear that the strict, quasi-automatic mutual trust at play in the CJEU case law on the recognition of civil judgments leads to a concrete clash of standards between the two Courts.[27]

---

[24] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193069%22]} (Accessed 2 March 2025).

[25] Eleonora Di Franco and Mateus Correia de Carvalho, Mutual Trust and EU Accession to the ECHR: Are We Over the Opinion 2/13 Hurdle? https://www.europeanpapers.eu/en/europeanforum/mutual-trust-eu-accession-to-echr-are-we-over-opinion-2-13-hurdle (Accessed 5 February 2025).

[26] https://curia.europa.eu/juris/liste.jsf?language=en&num=C-491/10 (Accessed 4 March 2025).

[27] *Ibid.*

V. The EU's Accession to the ECHR – what's new?

The need for EU accession to the ECHR, for the first time, was suggested by the European Commission in 1979, as it would contribute to the coherence of the human rights protection in Europe, and more specifically in the EU.[28] In this sense, it must be pointed out that the initial opinion of the European Commission in its 1976 report, considering accession as "not necessary" since fundamental rights laid down in the ECHR "are recognized as generally binding in the context of (EU) law".

In the years that followed, number of positive, as well as negative opinions, were presented. In 1996 for example, in Opinion 2/94, the ECJ ruled that as European Community law (as it then was) stood at that time, the EC could not accede to the ECHR. Only a Treaty amendment could overturn this judgment, and in 2009, the Treaty of Lisbon did just that, inserting a new provision in the Treaties that required the EU to accede to the ECHR (Article 6(2) TEU).

Namely, with article 6(2) of the Treaty for the Functioning of the EU[29], the Union secured the legal grounds for the EU accession to the ECHR, highlighting not only the commitment of the member states to allow this process within the EU legal system, but also within their membership in the Council of Europe as co-signatories of the ECHR[30] and the Protocol 14[31].

The Lisbon Treaty also added a Protocol 8 to the Treaties, regulating aspects of the accession, as well as a Declaration requiring that accession to the ECHR must comply with the "specific characteristics" of EU law. However, these new Treaty provisions could not by themselves make the EU a contracting party to the ECHR. To obtain that outcome, it was necessary for the EU to negotiate a specific accession treaty with the Council of Europe institutions.[32] In addition, let us see a brief chronology of this process.[33]

---

[28] European Commission, 'Memorandum on the accession of the Communities to the European Convention on Human Rights', COM (79) 210 final. https://eur-lex.europa.eu/legal-content/SV/ALL/?uri=CELEX:51979DC0210 (Accessed 7 February 2025).

[29] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF. (Accessed 10 February 2025).

[30] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF.(Accessed 10 February 2025).

[31] http://conventions.coe.int/Treaty/en/Treaties/Html/194.htm. . (Accessed 10 February 2025).

[32] Steve Peers, EU Law Analysis, Expert insight into EU law developments, Thursday, 19 December, 2014, http://eulawanalysis.blogspot.com.2014. (Accessed 10 February 2025).

[33] José Martín Y Pérez de Nanclares (2013), "The accession of the European Union to the ECHR: More than just a legal issue", WP IDEIR nº 15, Cátedra Jean Monnet, Prof. Ricardo Alonso Garcia,

On 26 May 2010, the Committee of Ministers of the Council of Europe gave an *ad hoc* mandate to its own Committee for Human Rights to talk with the EU about the legal instrument that ought to be used for the EU accession to the ECHR. From the EU side, the EU justice ministers gave on 4 June 2010 a mandate to the European Commission to lead the talks on EU's behalf and on its account. The official talks for the EU accession to the ECHR started on 7 July 2010 between Thorbjørn Jagland, Secretary General of the Council of Europe and Viviane Reding, then vice-president of the EC. The Human Rights Committee assigned the first task to an informal group composed of 14 members (seven from the EU members states and seven from the non-member states) to elaborate the accession instrument. These members were elected based on their expertise.

In the period from June 2010 to July 2011, this informal group had eight meetings with the EC, constantly reporting on the progress in their activities and the achieved results. In context of the held meetings, the informal group also had two meetings with the representatives of the civil society who continuously submitted remarks to the working documents of the group. In June 2011, the working group completed its work and submitted a draft accession agreement together with the report which contained the explanations. In January of 2011, delegations from both European courts discussed the EU accession to the ECHR, putting the emphasis on the future connection between the two courts in context of specific cases launched against the EU and within the ECHR system.

In October 2011, the Human Rights Committee discussed with the Committee of Ministers the draft-instruments and the transmission treaties for the report and the draft-instruments aimed at their consolidation and future guidance. On 13 June 2012, the Committee of Ministers, in accordance with its instructions, allowed the Human Rights Committee to continue with the talks with the EU within the ad-hoc group "46+1" in order to finalize the accession instruments without delay. This ad-hoc group held four meetings in Strasbourg[34]. On 5 April 2013 the negotiators from the 47 member states of the Council of Europe and the EU finalized the draft treaty for the EU accession to the ECHR. After a long negotiation process, this accession treaty in 2013 was agreed in principle.

On 18 December, 2014, the CJEU delivered negative opinion of the EU accession to the ECHR, insisting that "accession must take into account the particular characteristic of the EU". It stated that the EU accession to the ECHR under the provisions of the current draft agreement would undermine the autonomy

---

http://pendientedemigracion.ucm.es/centros/cont/descargas/documento38813.pdf. (Accessed 8 February 2025).

[34] On 21 June 2012, 17-19 September 2012, 7-9 November 2012 and 21-23 January 2013.

and primacy of EU law.[35] The Court notably expressed concerns about the effect of the accession on internal relations between member states and the EU, given that "as regards the matters covered by the transfer of powers to the EU, the member states have accepted that their relations are governed by EU law to the exclusion of any other law", and that "EU law imposes an obligation of mutual trust between those member states". The Court have also pointed out that under the current draft agreement the ECtHR would be able to adjudicate disputes on the interpretation of EU law, undermining the primacy of the ECJ in this regard.

The Court also rejected the co-respondent mechanism, considering that "the ECtHR would be required to assess the rules of EU law governing the division of powers between the EU and its member states", and that it "could adopt a final decision in that respect which would be binding both on the member states and on the EU."[36] To permit the ECtHR to adopt such a decision would risk adversely affecting the division of powers between the EU and its member states. The Court also expresses its view on the procedure for the prior involvement of the Court. The question whether the Court has already given a ruling on the same question of law as that at issue in the proceedings before the ECtHR can be resolved only by the competent EU institution, that institution's decision having to bind the ECtHR. To permit the ECtHR to rule on such question would be tantamount to conferring on its jurisdiction to interpret the case-law of the Court. Also, the Court observes that the draft agreement excludes the possibility of bringing a matter before the Court in order for it to rule on a question of interpretation of secondary law by means of that procedure. Limiting the scope of that procedure solely to questions of validity adversely affects the competences of the EU and the powers of the Court. In the

[35] In its Opinion 2/13, ECHR, EU: C2014:2454, delivered on 18 December 2014, the Court of Justice has blocked the path for the accession of the EU to the European Convention of Human Rights. This outcome may have come as a slight surprise for all the Member States and EU institutions that participated in the hearing before the ECJ on 5 and 6 May 2014, as part of the proceedings for an Opinion on the draft agreement on EU accession to the Convention. At that hearing there seems to have been a far-reaching consensus among the invited participants that the draft accession agreement should be considered compatible with the EU Treaties. It may also come as a surprise for all those commentators who have explored and accepted the compatibility of the final draft agreement with the fundamental principles of EU law.
Editorial comments, The EU's Accession to the ECHR- a "NO" from the ECJ!, Common Market Law Review 52, 1-16, 2015, Kluwer Law International, http://www.kluwerlawonline.com/abstract.php?id=COLA2015001 (Accessed 6 February 2025).

[36] CJEU delivers negative opinion on draft accession agreement of EU to ECHR, 20 December, 2014, Research Project on Shared Responsibility in International Law, http://www.sharesproject.nl/news/ecj-delivers-negative-opinion-on-draft-accession-agreement-of-EU-to-ECHR. (Accessed 2 February 2025).

light of the problems identified, the Court concludes that the draft agreement on the accession of the EU to the ECHR is not compatible with the EU law.[37]

In the years following Opinion 2/13, several legal and political developments have unfolded that could potentially help the EU overcome the hurdles raised by the CJEU. Following the Opinion, there were efforts to revise the proposed arrangements to address the CJEU's concerns. These included discussions on how to resolve issues related to the relationship between the CJEU and the ECtHR, ensuring that the EU legal order remains intact while aligning with the ECHR framework. Although the EU's accession to the ECHR has not yet materialized, some progress has been made in the broader context of human rights law. For example, the EU has taken steps to integrate human rights into its legal and political frameworks more robustly, even without direct accession to the ECHR. It has also been seeking more effective means of dealing with human rights issues within the EU's legal order, such as incorporating EU Charter of Fundamental Rights into its decision-making. In the context of mutual trust, the issue remains pivotal. The EU's internal legal system operates on the principle of mutual trust, particularly in areas like judicial cooperation and the free movement of people. The EU and its member states rely on the assumption that all member states uphold human rights standards that align with EU principles. Accession to the ECHR could strengthen this trust by aligning EU law more directly with international human rights norms. However, concerns remain about how mutual trust might be affected by the potential for divergent rulings from the CJEU and ECtHR. Politically, the EU's accession to the ECHR is still a priority for many human rights advocates, but the legal and institutional complexities, especially with regard to the role of the CJEU, remain significant barriers. The EU might still need to overcome challenges around harmonizing its judicial practices with those of the ECtHR.

VI. Conclusion

The EU has not yet fully overcome the challenges outlined in the CJEU Opinion 2/13, and it remains uncertain whether it will be able to accede to the ECHR under the current framework. While legal adjustments have been discussed, mutual trust, especially regarding the autonomy of EU law, continues to be a major point of contention. The issue of mutual trust between the EU legal order and the ECtHR remains unresolved, and without a clear solution, the EU's accession to the ECHR may remain stalled. However, the ongoing dialogue, legal reform discussions, and the evolution of EU law in areas related to human rights could

[37] Opinion 2/13, Court of Justice of the EU, http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140180en.pdf. (Accessed 10 February 2025).

eventually lead to a more feasible path for EU accession to the ECHR—one that reconciles the principles of mutual trust and the independence of the EU legal order.

The EU's accession to the ECHR was intended to strengthen human rights protection in the EU by making EU institutions subject to the ECtHR's jurisdiction. However, as noted earlier, the CJEU has been reluctant to allow this accession due to concerns about the autonomy of the EU legal system. This has led to a stalemate and a lack of clarity regarding how EU institutions would be held accountable for human rights violations under the ECHR. Delay in accession also means that EU law and the ECHR have not been fully integrated, leaving a gap in human rights enforcement within the EU framework. The challenges in human rights protection between the CJEU and ECtHR largely stem from differences in jurisdiction, legal frameworks, and interpretive approaches. While both courts share the goal of protecting human rights, their differing mandates and legal structures have sometimes led to conflicting rulings and a lack of coordination. These challenges require careful balancing to ensure that individuals' rights are protected consistently across Europe, and greater cooperation and dialogue between the two courts may be necessary to address these complexities.

Bibliography

1. Alexandros-Ioannis Kargopoulos (2015), ECHR and the CJEU Competing, overlapping, or Supplementary Competences?, Published in printed, Issue 3/2015, pp 96 – 100. https://eucrim.eu/articles/echr-and-cjeu/ (Accessed 10 March 2025).

2. José Martín Y Pérez de Nanclares (2013), "The accession of the European Union to the ECHR: More than just a legal issue", WP IDEIR nº 15, Cátedra Jean Monnet, Prof. Ricardo Alonso Garcia, http://pendientedemigracion.ucm.es/centros/cont/descargas/documento38813.pdf. (Accessed 8 February 2025).

3. CJEU delivers negative opinion on draft accession agreement of EU to ECHR, 20 December, 2014, Research Project on Shared Responsibility in International Law, http://www.sharesproject.nl/news/ecj-delivers-negative-opinion-on-draft-accession-agreement-of-EU-to-ECHR. (Accessed 2 February 2025).

4. Editorial comments, The EU's Accession to the ECHR- a "NO" from the ECJ!, Common Market Law Review 52, 1-16, 2015, Kluwer Law International, http://www.kluwerlawonline.com/abstract.php?id=COLA2015001, (Accessed 6 February 2025).

5. Eleonora Di Franco and Mateus Correia de Carvalho, Mutual Trust and EU Accession to the ECHR: Are We Over the Opinion 2/13 Hurdle? https://www.europeanpapers.eu/en/europeanforum/mutual-trust-eu-accession-to-echr-are-we-over-opinion-2-13-hurdle (Accessed 5 February 2025).

6. European Commission, 'Memorandum on the accession of the Communities to the European Convention on Human Rights', COM (79) 210 final.

https://eur-lex.europa.eu/legal-content/SV/ALL/?uri=CELEX:51979DC0210 (Accessed 7 February 2025).

7. Final consolidated version of the draft accession instruments as provisionally approved by the 46+1 Group at its 18th meeting, 46+1(2023)36 of 17 March 2023, available at: Council of Europe, 'Final Consolidated Version of the Draft Accession Instruments' (17 March 2023). rm.coe.int.

8. J.H.H. Weiler (1995) 'Fundamental Rights and Fundamental Boundaries: On Standards and Values in the Protection of Human Rights', reprinted in J. H. H. Weiler (1999) *The Constitution of Europe: do the New Clothes Have an Emperor? And other essays on European integration* (Cambridge University Press), pp. 107-116.

9. Marten Breuer, 'No Donum Danaorum! A reply to Daniel Thym's "A Trojan Horse?"',*VerfBlog*, 2013.9,16. http://www.verfassungsblog.de/en/no-donum-danaorum-a-reply-to-daniel-thyms-a-trojan-horse/ (Accessed 6 March 2025).

10. Opinion 2/13, Court of Justice of the EU, http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140180en.pdf. (Accessed 10 February 2025).

11. P. Cruz Villalón (2012), '*Rights in Europe – The Crowded House*' King's College London – Working Paper. https://dokumen.pub/the-eu-charter-of-fundamental-rights-as-a-binding-instrument-five-years-old-and-growing-9781782258254-9781782258261-9781782258230.html (Accessed 2 March 2025).

12. Steve Peers, EU Law Analysis, Expert insight into EU law developments, Thursday, 19 December, 2014, http://eulawanalysis.blogspot.com.2014. (Accessed 10 February 2025).

13. Tanja Karakamisheva-Jovanovska, The European Convention of Human Rights and the EU – Situations, Dilemmas, Challenges,https://www.academia.edu/21547044/THE_EUROPEAN_CONVENTION_OF_HUMAN_RIGHTS_AND_THE_EUROPEAN_UNION_SITUATIONS_DILEMMAS_CHALLENGES_ (Accessed 6 March 2025).

14. Tatiana Soldanescu (2022), The ECtHR faced with U.N.S.C. chapter VII resolutions containing measures in contradiction with the ECHR. Paix et sécurité européenne et internationale. ffhalshs-03591803 https://shs.hal.science/halshs-03591803v1/document (Accessed 7 March 2025).

15. Tawhida Ahmed, Israel de Jesús Butler (2006), The European Union and Human Rights: An International Law Perspective, *European Journal of International Law*, Volume 17, Issue 4, 1 September, pp. 771–801, https://doi.org/10.1093/ejil/chl029.

Useful links:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF. (Accessed 10 February 2025).

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF.(Accessed 10 February 2025).

http://conventions.coe.int/Treaty/en/Treaties/Html/194.htm. . (Accessed 10 February 2025).

https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-193069%22]} (Accessed 2 March 2025).

https://curia.europa.eu/juris/liste.jsf?num=C-441/17 (Accessed 4 February 2025).

https://ios.edu.pl/wp-content/uploads/2022/01/Zalacznik-nr-1-Plik-nominacyjny-2014.pdf (Accessed 2 March 2025).

https://verfassungsblog.de/bialowieza-forest-the-spruce-bark-beetle-and-the-eu-law-controversy-in-poland/ (Accessed 8 March 2025).

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62005CJ0402 (Accessed 2 March 2025).

https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-164515%22]} (Accessed 7 February 2025)

https://www.coe.int/en/web/dlapil/speeches-of-the-director/-/asset_publisher/ja71RsfCQTP7/content/europe-s-multi-layered-human-rights-protection-system-challenges-opportunities-and-risks#_ftn2 (Accessed 30 January 2025).