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## PACE gives boost to European Union accession to ECHR

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New backing for the accession of the European Union (EU) to the ECHR was given by a Committee of the Parliamentary Assembly of the Council of Europe (PACE) report released in March 2008.<sup>1</sup>

Should the EU's institutions be under the supervision of the ECtHR, just like the governments of EU member states? The issue is not a new one, having been repeatedly advanced since the 1970s, not only by the European Commission and European Parliament but also by the Council of Europe (CoE) itself. Fresh impetus has come from the Treaty of Lisbon, agreed by the EU's Council on 13 December 2007, and which states: "*the Union shall accede to ECHR*".<sup>2</sup> The logic favouring accession has not changed: sign-

ing the ECHR is a pre-condition of EU membership, but whilst this means EU member states are individually bound by the ECHR, EU institutions are not. Currently it is not possible for a person in the EU to bring a case to the ECtHR against, for example, the EU Commission.

In an environment in which the EU's institutions – such as the European Parliament and the Commission, among others – have an increasing influence and power over member states' activities, the arguments in favour of making EU institutions accountable to the ECtHR grow stronger. Citizens of member states are increasingly likely to have their affairs governed by EU law and policies. Therefore, argues PACE's Legal Affairs and Human Rights Committee, EU citizens deserve a consistent guarantee of human rights protection in respect of the EU's actions; the Union should be prepared to submit

its own acts to the external supervision of the ECtHR.

The Committee endorses a number of favourable arguments, urging that the time is right to make progress on the question, after too long a period of stalling. Not that the issue is likely to be straightforward: quite apart from institutional inertia, there remain technical barriers to overcome.

What are the arguments in favour of accession? The Committee is unequivocal about the strong message that accession would convey in respect of the EU's commitment to the protection of human rights. Indeed some consider that the political and symbolic value of accession is of more consequence than the concrete changes that would follow. Nevertheless, practical benefits would accrue.

Accession would help iron out discrepancies in human rights standards that

currently exist. Consistency would be enhanced by the adoption of the uniform ECHR standard by those EU institutions, to the benefit of EU citizens.

By delegating increasing levels of power to the EU, member states allow a growing number of policies and legislation to be made quite outside the ECHR's reach. Indeed, EU institutions are perhaps the only public authorities operating in CoE countries that are beyond the ECtHR's jurisdiction. Any transfer of power from domestic legislatures to the EU represents law-making taken outside of ECHR protection. Accession to the ECHR by the EU would remedy this anomalous effect, says the PACE Committee. The institutions would place themselves under the scrutiny of the same system of external monitoring that all member states must individually undergo.

The EU already has its own human rights standards – for example its Charter on Fundamental Rights.<sup>3</sup> Some argue that this reduces the urgency of accession to the ECHR. But the Committee's general view is that such measures would benefit from the complementarity, with parallel ECHR obligations resulting in improved convergence between the different standards.

More practically still, EU citizens would be able to bring allegations of EU institutions' human rights transgressions directly before the ECtHR, a course of action currently unavailable. Legal remedies for victims would be simplified. In the present system a member state must appear as respondent, almost as a proxy, and perhaps be subject to a remedy that depends on a third party – the EU – for its implementation.<sup>4</sup> Following EU accession, the correct respondent, if it were an EU institution, would appear and – if the finding were adverse – compensate.

Reservations still exist however. Doubts arise over the perception that the European Court of Justice – which interprets matters of EU law for member states' own courts – would be subordinating itself to the ECtHR. There is a view that accession to the ECHR may be superfluous, with some EU human rights measures already in place, and supervision by the ECtHR, or at least, the binding nature of its jurisprudence, over EU institutions, already endorsed by judgments from Strasbourg.<sup>5</sup> Most of these concerns are rebutted to the PACE Committee's satisfaction, but they could still put a gentle brake on the accession process.

Other complexities, such as the legal

route by which EU accession will be authorised, in the unpredictable landscape of Treaty of Lisbon ratification, and the question of whether the EU or the European Community, has appropriate status as a legal person, though apparently troublesome, are not likely to be fatal to the process.

There is clearly a growing impetus moving towards accession. But, it may lack the overall urgency which the PACE Human Rights Committee would like to impart to it. The majority view is that accession is desirable. That it will happen is very likely; *when* it will take place is another matter.

1 PACE, 18 March 2008. *The Accession of the European Union/European Community to the European Convention on Human Rights*, Report of the Committee on Legal Affairs and Human Rights, Doc. 11533, [Online] Available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc08/EDOC11533.pdf>.

2 Treaty of Lisbon 2007, amending Treaty on European Union, Article 6(2), [Online] Available at: [www.consilium.europa.eu/uedocs/cmsUpload/st06655.en08.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/st06655.en08.pdf).

3 Charter of Fundamental Rights of the European Union (2000/C 364/01), [Online] Available at: [www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).

4 See *Matthews v UK* (No. 24833/94) 18/2/99; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland* (No. 45036/98) 30/6/05.

5 Eg. the *Bosphorus* judgment, supra 4.