THE EU'S ACCESSION TO THE CONVENTION ON HUMAN RIGHTS: A NEW ERA OF CLOSER COOPERATION BETWEEN THE COUNCIL OF EUROPE AND THE EU?

SIMONE WHITE*

ABSTRACT

The sound development of EU criminal law depends on the adoption of human rights standards at EU level. The EU's accession to the Convention on Human Rights has been described as 'mission impossible' because of the number and complexity of issues to be negotiated. Yet the stakes are high and there is a political will to build a coherent human rights system at European level. The author argues that the working link between the European Union and the Council of Europe needs to be further strengthened and that a 'Greater Europe' criminal law/human rights regime will be made possible by the accession of the European Union to ECHR.

Accession of the EU to the ECHR is of pivotal importance to the development of European criminal law. The piecemeal incorporation of Convention rights into EC (now EU) law as 'principles of EC law' just lacks credibility when it comes to EU procedural law or the possibility of adopting a European Public Prosecutor. Accession can only contribute to a climate of 'mutual trust' that is so often found lacking when it comes to mutual recognition in practice. Historically, however, accession has proved impossible until the recent Treaty change.

* PhD. The author works at the European Anti-Fraud Office and is a Hon. Research fellow at the Institute of Advanced Legal Studies in London. This article is not intended to reflect the views of the European Commission.

Simone White

1. 'NO' TO ACCESSION BEFORE LISBON

In its Opinion 2/94 of 1996[1] the European Court of Justice ruled that an accession by the Community to the ECHR could be based neither on any specific legal basis in the Treaties nor on then Article 235 EC (now Article 352 TFEU). Accession has been discussed for over thirty years.[2] During the Treaty of Nice IGC, Finland had proposed the following amendment to (then) Article 303EC: 'the Community shall establish all appropriate forms of cooperation with the Council of Europe. The Community shall have the competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November, 1950'.[3]

Accession was to be put within a broader framework, that of a policy for closer cooperation with the Council of Europe. In the area of freedom, security and justice for example, detailed proposals were already made in 2002 to enable the European Union and the Council of Europe to jointly work towards the realisation of an area of freedom, security and justice for the whole of Europe.[4] Suggestions included (i) building closer cooperation on the foundations of the Council of Europe's existing instruments and institutions, (ii) active participation of the European Union in the preparation of Council of Europe treaties and accession to them, (iii) developing jointly pan-European responses to major challenges (terrorism, organised crime, corruption, money laundering, drugs and human trafficking, legal protection of children and the family), and (iv) using the forum of the Council of Europe for EU foreign policy in the field of justice and home affairs towards its immediate neighbours. The final report of the Convention in 2002 claimed that accession would give a strong political signal of coherence between the European Union and the 'greater Europe'; would give citizens an analogous protection *vis-à-vis* acts of the Union as they presently enjoy vis-à-vis the Member States; and would ensure harmonious development of the case law of the two courts, especially in view of the incorporation of the EU Charter of Fundamental Rights into the Treaties.[5]

1 Opinion 2/94 of the European Court of Justice of 28 March 1996 concerning the accession by the Community to the Convention for the Protection of Human Rights and Fundamental Freedoms.

2 See Report of the Commission on the accession of the Communities to the European Convention on Human Rights, 2 May 1979 COM(79) 210, pp. 4–5.

3 See The European Convention (2002) Working Group II 'Incorporation of the Charter/accession to the EHCR', Working Document 15, 12 September.

4 See Council of Europe (2002) Memorandum by the Secretary General of the Council of Europe, Convention on the future of Europe, Freedom, security and justice for the whole of Europe, Involving the Greater Europe in the realisation of an area of freedom, security and justice SG/Inf(2002)42.

5 Final Report of Working Group II, CONV 354/02, 22 October 2002, pp. 11–12.

2. 'YES' TO ACCESSION AT LAST

Since the entry into force of the Lisbon Treaty in 2009, a specific legal basis exists for the Union's accession of the ECHR. Article 6(2) TEU stipulates that the Union shall accede to the ECHR, and that such accession shall not affect the Union's competence. Article 6(3) TEU reaffirms that fundamental rights, as guaranteed by the ECHR, and as they result from the constitutional traditions common to the Member states, constitute general principles of the Union's law. The European Community/Union is already a party to a number of Council of Europe conventions. So why now? Accession to ECHR has been discussed for over 30 years, and from a substantive and practical point of view it could be said that the urgency to accede has diminished, due to the case law of the ECJ and legislative developments within the EU, such as the adoption of the EU Charter of Fundamental Rights attached to the Lisbon Treaty. In a report on the institutional aspects of accession,[6] the European Parliament stressed the main arguments in favour of accession of the European Union to ECHR:

Accession constitutes a move forward in the process of European integration and involves one further step towards political Union. While the Union's system for the protection of fundamental rights will be supplemented and enhanced by the incorporation of the Charter of Fundamental Rights into its primary law, its accession to the ECHR will send a strong signal concerning the coherence between the Union and the countries belonging to the Council of Europe and its pan-European human rights system; this accession will also enhance the credibility of the Union in the eyes of third countries which it regularly calls upon in its bilateral reports to respect the ECHR, Accession to the ECHR will afford citizens protection against the action of the Union similar to that which they already enjoy against action by all the Member States; this is all the more relevant because the Member States have transferred substantial powers to the Union, Legislative and case law harmonisation in the field of human rights of the rule of law of the EU and the ECHR will contribute to the harmonious development of the two European courts in the field of human rights, particularly because of the increased need for dialogue and cooperation, and thus will create an integral system, in which the two courts will function in synchrony. Accession will also compensate to some extent for the fact that the scope of the Court of Justice of the European Union is somewhat constrained in the matters of foreign and security policy and police and security policy by providing useful external judicial supervision of all EU activities, Accession will not in any way call into question the principle of the autonomy of the Union's law, as the Court of Justice of the European Union will remain the sole supreme court adjudicating on issues relating to EU law

6 European Parliament (2010) Report on the institutional aspects of the accession of the European Union to the European Convention for the Protection of Human rights and fundamental Freedoms (2009/2241(INI)), Committee on Constitutional Affairs, Rapporteur: Ramón Jáuregui Atondo, Rapporteur for the opinion of the Committee on civil liberties, justice and home affairs: Kinga Gál.

and the validity of the Union's acts, as the European Court of Human Rights must be regarded not only as a superior authority but rather as a specialised court exercising external supervision over the Union's compliance with obligations under international law arising from its accession to the ECHR; the relationship between the two European courts shall not be hierarchical but rather a relationship of specialisation; thus the Court of Justice of the European Union will have a status analogous to that currently enjoyed by the supreme courts of the Member States in relation to the European Court of Human Rights.

3. RELATIONSHIP OF ECHR WITH THE EU CHARTER

Article 53 of the Charter makes it clear that the level of protection provided by the Charter must be at least as high as that of the Convention. The Charter goes further than ECHR in some areas, enshrining other rights and principles, such as economic and social rights, as well as the right to data protection and good governance (so-called 'third generation' rights in EU parlance). The Venice Commission[7] suggested that this could be a threat to legal certainty if guarantees afforded by either system were not exactly the same. The existence of a legally binding formal list of rights will almost certainly significantly increase the number of rights-based challenges to the legality of EU or Member State action.

However, accession should bring an end to the present situation where there are many problems, including: no appeal to the ECtHR for an alleged violation of ECHR by a European institution; a risk of conflicting interpretations of the requirements of the ECHR;[8] insufficient scrutiny applied to measures adopted by the European Union.[9] Sometimes contracting parties may find it difficult to comply with a judgement from the ECtHR.[10]

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7 European Commission for Democracy through Law. The Venice Commission is the Council of Europe's advisory body on constitutional matters. Its members are senior academics, in the field of constitutional or international law, supreme or constitutional court judges or members of national parliaments. Acting on the commission in their individual capacity, the members are appointed for four years by the participating countries.

8 Although the ECJ has demonstrated a willingness to follow the ECtHR's lead on interpretation of the Convention in C-94/00 Roquette Frères SA, it has at times interpreted the content of Convention rights differently to the Strasbourg Court – see for example Case C-159/90 SPUC v Grogan [1991] ECR I-4685, Opinion of Advocate General Van Gerven.

9 ECHR Case Bosphorus Hava Yollari Turizm ve Ticaret Aninim Sirketi v Ireland Application no 45036/98 Decision as to admissibility of 30 June 2005 (GC) 42 EHRR 1.

10 See ECHR case Matthews v United Kingdom, ECtHR Application 24833/94, judgment of 18 February 1998.

4. 'RAPID' ACCESSION

The Stockholm Programme foresees that a 'rapid' accession to the ECHR should be made[11] and invites the Commission to submit a proposal on the accession of the EU to the European Convention on Human Rights as a matter of urgency. The negotiating mandate is still in its early phase, but some of the legal and organisational issues have already been identified, the complexity of which would appear to decry the possibility of a 'rapid' path to accession. However, legal and organisational difficulties can sometimes melt like snow in the sun in the presence of political will, so there is room for (cautious) optimism on this score.

In a European Parliament hearing on the institutional aspects of the European Union's accession to the ECHR, Serhiy Holovaty stated that it was right to give accession top priority, 'because the Union's powers have and are likely to continue to extend to fields which traditionally belong to the 27 Member States of the EU. Hence the need for individuals – aggrieved by acts adopted by the EU – to have access to the Strasbourg Court which is competent to determine whether or not a given act infringes fundamental human rights, as guaranteed in the Convention and its protocols'.[12]

At the outset, a number of issues have been identified which will be addressed in the negotiating directives. Issues identified have included the mechanics and scope of accession, aspects of the application of Protocol 8 to the Lisbon Treaty and the preservation of the European Union's system of judicial protection. Negotiations are framed within the broader picture, which is the evolution of the relationship between the Council of Europe and the European Union.

5. MECHANICS AND SCOPE OF ACCESSION

The procedure which applies for an agreement between the European Union and an international organisation is stipulated in Article 218 TFEU. The Council authorises the opening of negotiations, adopts negotiating directives and concludes them.[13] The Commission submits recommendations to the Council, which adopts a decision authorising the opening of negotiations and nominates the head of the negotiating team.[14] The Council may address directives to the negotiator.[15] On 26 May 2010, the Committee of Ministers of the Council of Europe gave an *ad hoc* mandate to its

11 Point 2.1.

12 Intervention by Serhiy Holovaty, vice-Chairman of the EP Committee on Legal Affairs and Human Rights, Hearing on the institutional aspects of the European Union's accession to the European Convention on Human Rights, European Parliament, Committee on Constitutional Affairs, 18 March 2010.

13 Article 218(2) TFEU.

14 Article 218(3) TFEU.

15 Article 218(4) TFEU.

Steering Committee for Human Rights to elaborate with the EU the necessary legal instrument for the EU's accession to the ECHR.

The agreement on accession is subject to unanimous agreement by the European Council in accordance with Article 218(8) TFEU. It also has to be approved by all 47 existing parities to the ECHR. The Council also has to obtain the consent of the European Parliament for concluding the agreement. Article 218(10) provides for the European Parliament to be fully informed of all stages of the negotiations. The Commission has proposed negotiating directives to the Council so that it may conduct the requisite negotiations with the Council of Europe.

The ECHR was originally drafted with state parties only in mind. However Protocol 14 to the ECHR, which entered into force on 1 June 2010 contains a provision which would allow the EU to accede to the Convention (amending Article 59 of the ECHR). The Interlaken Declaration[16] welcomed the entry into force of this Protocol but also called for measures to increase the efficiency of the ECtHR. Ways must be found to reduce the number of clearly inadmissible applications;[17] to ensure the full and rapid execution of the final judgments of the Court and to supervise the execution of the court's judgments.[18] The Declaration also stresses the need to simplify the procedure for amending Convention provisions of an organisational nature.

Accession to the European Convention on Human Rights does not mean that the EU will automatically be bound by the protocols attached to ECHR. Accession could be gradual, starting with the Convention and Protocols no 1(the right to vote), no 6 (abolition of the death penalty) and no 12 (general prohibition on discrimination). National derogations may have to be taken into account.

6. APPLICATION OF PROTOCOL 8 ATTACHED TO THE TEU

A way is being sought to ensure that the accession complies with conditions laid out in the treaties and their protocols. Protocol no 8 attached to Lisbon Treaty states that the agreement relating to accession to the ECHR must make provision for preserving the specific characteristics of the European Union and its law, in particular with regard to: (a) arrangements for the Union's possible participation in the control bodies of the ECHR and (b) mechanisms necessary to ensure that proceedings by non-member states and individual applications being correctly addressed to Member

16 High Level Conference on the future of the European Court of Human right, Interlaken Declaration, 19 February 2010.

17 Please see the principle of equivalence of protection below, which leads to rulings of inadmissibility.

18 At present, after exhaustion of national and EU remedies, cases can take over ten years to reach the ECtHR, see for example Case Bosphorus, op.cit.

States and/or the Union as appropriate.[19] The Protocol repeats the injunction that accession to the ECHR does not affect EU competences, and it seeks to preserve derogations made by Member States pursuant to Article 15 ECHR and reservations made by Member States in relation to their membership of the ECHR.

It is not yet clear whether there might be a European Union representative in the Council of Europe Committee of Ministers, which according to Article 14 of the Council of Europe Statute oversees the execution of ECHR judgments. At present a European Commission representative takes part, but has not right of vote.

The EU may be represented in Council of Europe bodies that exercise functions related to the ECHR, such as the Parliamentary Assembly (and concerning the appointment of Judges to the European Court of Human Rights), or the Committee of Ministers in its function of supervision of the execution of judgments relating to Article 46(2) ECHR.

A European Union judge would have to be appointed to the ECtHR. This would be consistent with the present arrangements, where all contracting parties' orders are represented. The question whether the EU judge would also have a deliberative role in cases which do not fall under EU competence is open. Article 22(1) ECHR requires that the judges be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party. There will be a need to decide on an institutional mechanism at EU level to secure the appointment of an EU judge.

7. PRESERVATION OF THE EUROPEAN UNION'S SYSTEM OF JUDICIAL PROTECTION

It is expected that EU accession to the ECHR will not modify the existing system of judicial remedies under EU law. Exhaustion of these remedies will be a precondition for bringing a case to the ECtHR in Strasbourg. Individual applications brought directly against EU acts will have to be distinguished from those challenging national measures that apply or implement EU law.

7.1. THE PRESENT 'EQUIVALENT PROTECTION' DOCTRINE: WILL IT CONTINUE AFTER ACCESSION?

The ECtHR ruled early on 1958 that international agreements of the Member States do not relieve them from responsibility under the Convention on Human Rights.[20] The Commission of Human Rights declared a request against the EC inadmissible in

19 This protocol relates to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and fundamental Freedoms, OJ L (2008) C115.

20 X v Germany, Application no 235/56 (1958) ECHR, Series A, p. 256.

CFDT v European Communities.[21] It was later confirmed that when an alleged violation was the result of EU legislation, this could not excuse the Member States from responsibility. They could not, by transferring powers to an international institution, evade their own responsibility under the ECHR.[22]

In the 1990's the ECtHR developed the doctrine of equivalent protection, which presumes that the EU legal order provides protection which is equivalent to that of the ECHR and considers claims against the EU inadmissible.[23] At the same time, the ECtHR maintained the principle that Member States remain responsible for the activities of an international organisation, whether it has a separate legal personality making it responsible for violations or not.

The scope of application of the principle of equivalent protection was clarified in *Bosphorus*.[24] By 'equivalent protection' the Court meant 'comparable', not 'identical' protection. For the purposes of evaluation, the ECtHR would take into consideration both the substantive guarantees offered and the mechanisms controlling their observance. In *Bosphorus*, the ECtHR did not find any manifest deficiencies to the protection of the applicant's rights and the application was found inadmissible, which was viewed by some as a 'missed opportunity to establish a clear, coherent and uncompromising approach to the protection of human rights within the Community legal order'.[25]

In his concurring opinion on *Bosphorus*, Judge Ress considered that the case revealed the importance of European Union's accession to the ECHR, in order to make its control mechanism complete within the Community legal order.[26]

There are arguments against the doctrine of 'equivalent protection' surviving after accession.[27] Firstly, it creates double standards, since the EU is subjected to less extensive review of its measures than contracting states.[28] The doctrine is too abstract and there is no test of proportionality to legitimise its application; the ground for this doctrine, it is also mooted, disappears after accession, the judgements of the EU courts

21 CFDT v the European Communities (1978) Application no 8030/77, ECHR Series A, p. 231.

22 Waite and Kennedy v Germany (GC) Application No 26083/94, ECtHR decision of 18 February 1999, para 67.

23 ECHR case Bosphorus, op. cit.

24 Ibid.

25 Peers, S (2006) Limited responsibility of European Union Member States for actions within the scope of Community law, judgment of 30 June 2005, Bosphorus Airways v Ireland, Application no 4506/98, European Constitutional Law Review, 2: 443–455.

26 Bosphorus, op.cit; concurring opinion of Judge Ress, paragraph 2.

27 Šaltinyté, L (2010) European Union accession to the European Convention on Human Rights/ stronger protection of fundamental rights in Europe? Jurisprudence, University Mykolas Romeris, Vilnius, Lithuania, www.mruni.eu/Lt/mokslo-darbai/jurisprudencija/.

28 See for example Kuhnert, K (2006) Bosphorus – Double standards in European human rights protection? Utrecht Law review, Volume 2, issue 2, December, pp. 177–189. The author argued that it will depend on the outcome of this issue (the equivalent protection issue whether the external boundaries of human rights jurisdiction in an enlarging Europe will expand in a coherent manner, both geographically and legally.

becoming subject to control by the ECtHR. The doctrine should be abandoned for its lack of clarity, according to Costello and Peers, since it is not clear under what circumstances the acts of the EU Member States are exempted from full judicial review of the ECtHR.[29]

Šaltinyté, however, believes that pragmatic considerations are likely to impinge and that the ECtHR is unlikely to abandon the doctrine in view of the time it would be likely to take a case to reach the ECtHR, after exhausting both EU and national legal remedies. It would be a more equitable and practical solution, she argues, if the ECtHR decided to maintain the doctrine and perhaps even expand it with respect to the states which, during the term of their membership, have demonstrated a high standard of human rights protection.[30]

Other considerations might impinge. With the entry into force of the Treaty of Lisbon, the area of judicial and police cooperation in criminal matters has become subject to the jurisdiction of the Court of Justice of the European Union, except for the jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. Member States may have preferences as to how they wish complaints concerning (sensitive) measures implementing EU criminal law are dealt with.

7.2. WHEN THE DOCTRINE OF EQUIVALENT PROTECTION DOES NOT APPLY

One aspect that is of particular interest to the author, who works for the European anti-Fraud Office of the European Commission, is that Accession should make it possible for any person claiming to be a victim of a violation of the ECHR by an institution or body of the Union is able to bring a complaint against the Union before the Strasbourg Court under the same conditions as those applying to complaints brought against the Member States. This prospect should bring an increased focus on procedure, governed by Article 6(2) ECHR and Article 41 of the EU Charter of Fundamental Rights, both in the EU anti-fraud and in the EU competition investigation fields. In *Tillack v Belgium*[31] the ECtHR considered that the searches carried out by the Belgian authorities, as a result of an OLAF[32] recommendation, had amounted to interference with Mr. Tillack's right to the freedom of expression. The purpose of the

29 Peers, S op.cit; Costello,C (2006) The Bosphorus Ruling of he European Court of Human Rights: Fundamental Rights and Blurred Boundaries in Europe, Human Rights Review, 6(1): 87–130, p. 94.

30 Šaltinyté, L op.cit.

31 Tillack v Belgium, ECHR Application no 20477/05, judgment of 27 November 2007, final 27/2/2008.

32 European Anti-Fraud Office, a Directorate General of the European Commission.

searches had been to identify journalistic sources: OLAF believed that by these mean it would be able to find out whether an OLAF official had leaked information. Th Court ruled that a journalist's right not to reveal his sources could not be considere a mere privilege to be granted or taken away, depending on the lawfulness o unlawfulness of their sources but was part and parcel of the right to information, t be treated with the utmost caution – even more so in this case, where he had bee under suspicion because of vague, uncorroborated rumours. The ECtHR considere that although the reasons given by the Belgian courts were relevant, they could not b considered sufficient to justify the impugned searches. Accordingly the Court foun that there had been a violation of Article 10 ECHR and awarded €30,000 for costs an €10,000 compensation. It must be noted in this context that, in proceedings before th CFI and the ECJ, Mr. Tillack had previously sought to annul OLAF's transmission o allegations to the Belgian police authorities and claimed compensation but that bot claims had been dismissed. Commentators argued that this raised concern abou institutional accountability, appearing to give OLAF an unfettered capacity t transmit allegations – on any evidential basis – to national authorities as suc transmissions have no binding legal effect.[33]

7.3. PRESERVING THE SPECIFIC NATURE OF EU LAW

The requirement that accession to the ECHR should be arranged in such a way as to preserve the specific feature of Union law is repeated in a Declaration appended to the Lisbon Treaty, which also emphasizes the existence of regular dialogue between the ECJ and the European Court of Human rights, stating that such dialogue could be reinforced when the Union accedes to that Convention.

There is a need for a mechanism indicating who should be considered the defendan in cases where the alleged breach of fundamental rights concerns national measure implementing EU law. If the task of defining the defendant was given to the ECHR there is a risk that the ECtHR would also have to decide on the allocation o competencies between the EU and its Member States.

Two options have been under discussion to preserve the monopoly of the ECJ on the interpretation of EU law.[34] The first option is that no specific mechanism i required. This is because under Article 267 TFEU,[35] a national court of last instance is obliged to make preliminary reference to the ECJ, where a question regarding the

33 The Protection of Journalistic sources – EC and ECHR perspectives, British Institute of International and Comparative Law, conference of 31 October 2007, www.biicl.org/events/view/-/id/208.

34 Council of the European Union (2010) Draft Council Decision authorising the Commission t negotiate the Accession Agreement of the European Union to the European Convention for th Protection of Human Rights and Fundamental Freedoms – Involvement of ECJ regarding th compatibility of legal acts of the Union with fundamental rights (paragraph 11 of the Negotiating Directives, 10568/10 2 June 2010.

35 Penultimate paragraph of Article 267 TFEU.

validity or the interpretation of a legal act of the union is raised before it. This would imply that the Strasbourg court interprets the requirement of exhaustion of domestic remedies in the sense that the applicant must have raised the question of compatibility of the act with fundamental rights already before the national court and have requested a preliminary reference to the ECJ on such matter. The ECtHR may also consider that home remedies have been exhausted when a national court of last instance has adopted a final decision and when no further intervention of the ECJ is needed.

The second 'Timmermans'[36] option states that a specific mechanism is needed. The Commission should be granted the possibility, once a claim is lodged by an individual before the ECtHR and has been declared admissible, to request the ECJ to rule on the compatibility of an EU act with fundamental rights. In such cases, the procedure before the Strasbourg Court should be suspended until the ECJ has given its ruling. According to Timmermans, this possibility would not require any amendments to the EU Treaties, insofar as the mechanism resolves a problem deriving from the accession and considering that the ECJ case states that an international agreement concluded by the EC (or EU) may attribute new competences to the ECJ.

There are a number of drawbacks attached to the Timmermans option, which include the possibility of delays and the risk of clashes between the two European Courts. An intermediate option might be the adoption of provisions encouraging national courts, especially courts of last instance to consider a more strict interpretation of the obligation to refer a case to the ECJ according to Article 267(3) TFEU where the compatibility of an act of EU law with fundamental rights is raised before them.

The need to devise a 'co-respondent' or a 'co-defendant' mechanism has been raised. This is to ensure that in certain cases both the EU and the EU Member States concerned may, where appropriate, be parties in any proceedings before the European Court of Human Rights. If a Member State is to be challenged on EU law, the EU may wish to be a co-defendant.

8. COOPERATION BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION

Accession negotiations promise to be technical. A number of legal and organisational issues will need to be tackled in quick succession whilst in parallel, the Council of Europe is conducting a review to try and improve the workings of the ECtHR. A wider issue for both the Council of Europe and the European Union is how EU law, which transfers extensive powers from Member States to the EU, can be linked effectively with international law, which is also evolving.[37]

36 Presentation of ECJ Judge Timmermans at the hearing of the AFCO Commission of the EP on 18 March 2010.

37 See Parliamentary Assembly of the Council of Europe (2010) The future of the Council of Europe in the light of its sixty years of experience, doc 12342, 15 July 2010.

The need not to aggravate current delays will also be in negotiators' mind, f justice delayed is justice denied. Some authors have argued that it is questionab whether accession to the ECHR will significantly add to the effective protection rights, given that the speed of judicial process is an element of that effectivene Advocate General Francis Jacobs has argued that 'EU accession, while widely regarde as valuable for political and symbolic reasons, will have rather limited concrete effec on the observance of human rights standards'.[38] This author believes that, put in th wider context of deepening relations between the EU and the Council of Europe an in particular their cooperation in criminal law related areas, accession will brin benefits.

All the issues of interplay between the EU and ECHR human rights systems mu not make us lose sight of the wider picture. Accession to ECHR is a unique opportunit for the European Union and the Council of Europe to develop closer cooperation. I fact accession should be viewed as part of a programme of *rapprochement* between th Council of Europe and the EU advocated in the 2006 Juncker Report.[39] This coul pave the way towards, *inter alia*, to a 'Greater Europe' criminal law/human right regime. The Juncker report recommends coordinating legislative initiative establishing a joint platform for assessment of standards, seeking the complementarit of texts and, when appropriate adopting each other's standards. Cooperative activitie should be intensified through the Venice Commission, the European Commission fo the Efficiency of Justice (CEPEJ),[40] the Group of States against Corruption (GRECO and Moneyval. Accession to these instruments should be encouraged in due course The report also recommended the forging of closer inter-parliamentary ties, takin the form of meetings between the Conferences of the Presidents of the political group in the European Parliament and the PACE,[41] and of regular and *ad hoc* meeting between the committee chairs of both assemblies.[42] It advocated closer cooperation under the European Neighbourhood Policy.[43] Reciprocal representation will also b necessary.

38 Jacobs, F Expert contribution to the Report of the Committee on Legal Affairs and Human Rights on the accession of the European Union/European Community to the European Convention on Human Rights, Council of Europe, Parliamentary Assembly doc. 11533 of 18 March 2008.

39 Council of Europe (2006) Council of Europe- European Union 'A sole ambition for the European continent', report by Jean-Claude Juncker, Primer Minister of the Grand Duchy of Luxembourg, to the attention of the Heads of State of Government of the Member States of the Council of Europe 11.4.2006.

40 See Council of Europe (2003) Resolution Res(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ) CEPEJ?GENERAL (2003)1.

41 Parliamentary Assembly of the Council of Europe.

42 Recommendation no 11 of Juncker Report, Ibid.

43 Recommendation no 7 of the Juncker Report, op.cit.

Following the Juncker Report, a Memorandum of Understanding was adopted between the Council of Europe and the European Union in 2007,[44] to promote cooperation between the two entities. This MoU may be revised in 2013.[45] It designates human rights and fundamental freedoms and the rule law as two areas of shared priorities for close cooperation. Since then, cooperation has increased in the fields of rule of law and legal cooperation. In 2009, cooperation between the Council of Europe and the European Commission in the fields of rule of law and legal cooperation covered a wide variety of fields, such as civil and criminal justice, the improvement of judicial cooperation, the rights of the child and the quality of pharmaceutical products, as well as the fight against terrorism, economic and cybercrime, corruption, money laundering, trafficking in human beings and violence against women. The European Committee for the Efficiency of Justice (CEPEJ), the Venice Commission and the Council of Europe Committee of Legal Advisers on Public International Law (CAHDI) have continued their fruitful working relations with the European Union institutions. Cooperation with these and other relevant expert bodies of the Council of Europe contributes to promoting Council of Europe standard within and beyond the borders of Europe.[46]

Joint programmes between the Council of Europe and the European Union in 2009 have included *inter alia* eight human rights programmes and seven Rule of Law programmes. These programmes promote human rights and support the reform of judicial systems in Albania, Armenia, Moldova, Turkey and Ukraine. They also support anti-corruption policies in Albania, Moldova, Turkey and Ukraine, fight against money laundering in Moldova, the Russian Federation and Ukraine and support a Prosecutors' network in South East Europe.[47] These programmes are an integral part of the EU's approach to crime and criminal law.

In conclusion, smooth human rights enforcement at EU level can be facilitated through the deepening of relations with the Council of Europe, along the lines of the Juncker Report. A revision of the Memorandum of Understanding between the European Union and the Council of Europe in 2013 should provide an opportunity to lay down rules of engagement to establish a new framework for enhanced cooperation and political dialogue[48] and to go further on the road to integrated approaches. Whilst problems remain – the relationship between the two courts, the need to preserve the

44 117th Session of the Committee of Ministers, Strasbourg 10–11 May 2007 CM(2007)74 https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2007)74.

45 Article 55 of the Memorandum of Understanding between the Council of Europe and the European Union, May 2007.

46 Council of Europe (2010) Cooperation between the Council of Europe and the European Union – Report for the 120th Ministerial Session CM(2010) 52, point 19.

47 Council of Europe (2010) Cooperation between the Council of Europe and the European Union – joint programmes between the Council of Europe and the European Union 2009–2010 CM(2010)52, 120th Session of the Committee of Ministers, Strasbourg 11 May 2010.

48 See eighth preamble of the Memorandum of Understanding between the Council of Europe and the European Union, op.cit.

competence of the ECJ, the doctrine of equivalent protection, the overlap between t
EU Charter of Fundamental Rights and the ECHR – the incentive to overcome th
is that the last vestiges of an artificial division in Human Rights law between t
ECHR and the EU can be overcome.