**EU ACCESSION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS:**

**THE STRASBOURG PERSPECTIVE**

**Johan Callewaert[[1]](#footnote-1)**

***Address to the Working Party on Fundamental Rights,***

***Citizens' Rights and Free Movement of Persons (FREMP)***

***Brussels, 24 June 2019***

Madam Chair,

Ladies and Gentlemen,

I am very pleased and honoured about your invitation to exchange views with this group of eminent EU law experts about EU accession to the Convention, a topic which fortunately seems to be back again on the agenda.

While I have been following closely the discussions about EU accession to the Convention, including as an Observer for the Strasbourg Court at the negotiations on the first draft accession agreement, I have to make clear from the start that I have no mandate to represent the Court when talking to you today. So I am sitting here in my personal capacity.

Now, what is the Strasbourg view on EU accession to the Convention? Not surprisingly, it has not changed since Opinion 2/13: both the European Court of Human Rights and the Council of Europe are still advocating EU accession. And I would add: perhaps even more than before, if one looks at what is happening without EU accession.

In other words, EU accession remains necessary and has even become urgent. It remains necessary because now, almost ten years after its entering into force, it has become clear that the EU-Charter alone will not do the trick and that for as long as there is only the Charter to do it, the case-law will remain unstable.

The Charter is simply not sufficient to ensure a comprehensive compatibility between EU law and the Convention, a compatibility without black spots, which is what EU accession is designed to achieve. In this respect, the Charter does not fully deliver on its promises. And neither do the other mechanisms having an impact on the issue.

I have tried to describe in some detail the problems arising in this respect in a recent article published in the Common Market Law Review (issue 6/2018)[[2]](#footnote-2) to which I refer you for further details as to what I mean by that.

As such, this situation would not be worth reporting, despite its unsatisfactory nature, if there wasn’t a price to pay for it, which is a fair amount of legal uncertainty and “back and forth” in certain areas of the case-law. Not in all areas, but in an increasing number of them.

And this price is being paid not by the European Courts but by the domestic courts and by the citizens turning to them for adjudication of their fundamental rights.

It is the domestic courts who pay the price, because they are standing at the end of the chain, where up to three different legal sources come together – EU law, national law and Convention law – and it is the domestic courts which face the challenge of having to combine those sources so as to make them predictable and understandable by the citizens.

The EU, for its part, has also an interest in helping the domestic courts to meet that challenge. After all, in most cases EU law comes to the citizens via the domestic courts of the Member States.

Please allow me to say that I know what I am talking about. Several times a year I meet with judges from different national courts of all levels for an exchange about the relationship between the Convention and EU law. I can tell you: many of them are at a loss when they realize the increasing complexity of this relationship and the unstable case-law resulting from it.

I can therefore only welcome the fact that you are actively preparing a new round of negotiations on the EU accession agreement, not least because this agreement should bring some stability in this area.

My intention today is to highlight some important aspects of the current situation from a Strasbourg point of view, which is also a global, cross-system point of view.

This is so because Strasbourg comes at the very end of the journey, once all other courts involved have spoken. In Strasbourg, we can look back at what happened at every stage of a set of proceedings and evaluate what worked well and what worked not so well.

For this reason, the Strasbourg perspective is perhaps the most relevant one to talk about EU accession, – or indeed the lack of EU accession – because we can see in every single case what the domestic courts made of the existing legal complexity and how this impacted on the citizens. After all, fundamental rights should benefit the citizens in the first place.

In support of my presentation, I have prepared 2 short Powerpoints, one on the procedural aspects involved, another on the substantial aspects.





Let me conclude by suggesting that now is perhaps a good time for the launch of a new round of negotiations on EU accession, almost 5 years after Opinion 2/13, as a new Secretary General of the Council of Europe will be elected by the Parliamentary Assembly of the Council this week. So somehow a new era is opening up in Strasbourg. This could be a convenient moment for a new go at EU accession.

Thank you.

1. Deputy Grand Chamber Registrar, European Court of Human Rights, Strasbourg ; Professor at the Universities of Louvain and Speyer. [↑](#footnote-ref-1)
2. “Do we still need Article 6(2) TEU? Considerations on the absence of EU Accession to the ECHR and its consequences”, available at <www.johan-callewaert.eu/en/veroffentlichungen>. [↑](#footnote-ref-2)