

UNIVERSITY OF OXFORD
FACULTY OF LAW
THE EU AS AN ACTOR IN INTERNATIONAL LAW
SEMINAR IX:
THE EUROPEAN UNION AND THE
EUROPEAN CONVENTION ON HUMAN RIGHTS

Questions for Discussion:

- Should the EU become a party to the ECHR?
- Would becoming a party to the ECHR make any difference for the protection of human rights in the EU?
- Can the EC be held responsible for violations of the ECHR by its institutions or by the Member States?
- Can the Member States be held responsible for violations of the ECHR by the EU/EC?
- Should the ‘European judge’ be barred from sitting as a single judge in cases against the State whose nationality he/she holds?
- May the election of a ‘European judge’ in addition to the judges from the Member States give rise to problems?
- Is there a way for the EU to accede to the ECHR if the Lisbon Treaty does not enter into force?
- Does EU accession to the ECHR require modifications of the European Convention on Human Rights and, if so, how can these be effected?
- To what extent does the ‘equivalent protection’ doctrine allow the European Court of Human Rights to scrutinize EU actions?
- How does the ‘equivalent protection’ doctrine and the Solange jurisprudence of the German Constitutional Court compare?

Case Law:

Case C-229/05 P (*PKK and KNK v. Council*), Judgment of the Court (First Chamber), 18 January 2007 (available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>), especially paras. 56-84

Bosphorus Hava Yollari Turizm v. Ireland, Application No. 45036/98, Judgment of 30 June 2005, available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>)

Matthews v. United Kingdom, Application No. 24833/94, ECHR, Judgment of 18 February 1999 (available at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>)

Case C-145/04 (*Spain v. United Kingdom*), Judgment of the Court (Grand Chamber), 12 September 2006 (available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>) [Spain challenging the measures taken by the UK in implementing the ECHR judgment in *Matthews v. United Kingdom* (GC), no. 24833/94, ECHR 1999-I]

Post-Lisbon Consolidated Version of the Treaty on European Union [ex TEU]:

Article 6(2): ‘The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.’

Article 6(3): ‘Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.’

Post-Lisbon Consolidated Version of the Treaty on the Functioning of the European Union [ex TEC]:

Art. 218(6): ‘The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

- (a) after obtaining the consent of the European Parliament in the following cases: [...]
- (ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms; [...].’

Art. 218(8): ‘The Council shall act by a qualified majority throughout the procedure. However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.’

Treaties

- Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
- Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, 2004 [both are available in *Blackstone’s International Law Documents*, 8th end., 2007]

Basic Reading:

- *Canor, I., Primus inter partes. Who is the Ultimate Guardian of Fundamental Rights in Europe, *European Law Review* 25 (2000), 3-21 (available at Westlaw)
- Clapham, A., The European Union before the European Court of Human Rights, in: L. Boisson de Chazournes, C.P.R. Romano, R. Mackenzie (eds.), *International Organizations and International Dispute Settlement: Trends and Prospects*, 2002, 73-88
- *Costello, C., The *Bosphorus* Ruling of the European Court of Human Rights: Fundamental Rights and Blurred Boundaries in Europe, *Human Rights Law Review* 6 (2006), 87-130 (available at <http://hrlr.oxfordjournals.org/cgi/content/abstract/6/1/87>)
- *Myjer, E., Can the EU Join the ECHR - General Conditions and Practical Arrangements, in Ingolf Pernice/Juliane Kokott/Cheryl Saunders (eds.), *The Future of the European Judicial System in a Comparative Perspective* (Baden-Baden: Nomos, 2006), 297-308 (available at http://www.ecln.net/index.php?option=com_content&task=view&id=21&Itemid=39)
- Peers, S., [Case Note] *Bosphorus* - European Court of Human Rights (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. 45036/98), *European Constitutional Law Review* 2 (2006), 433-455

Schorkopf, F., The European Court of Human Rights' Judgment in the Case of *Bosphorus Hava Yollari Turizm v. Ireland*, *German Law Journal* 6/9 (2006), 1255-1264 (available at <http://www.germanlawjournal.com/>)