

EU's Charter of Fundamental Rights and European Convention of Human Rights – new sources of constitutionalizing the European integration
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This Convention shall consider all avenues leading to reinforced legal certainty within the realm of European integration. That is the only persuasive way for our citizens to rely upon the integration values and to understand them.

One major step pointing out at this direction has already been recommended, i. e. for the Union to acquire single legal personality. The second has just been tabled. Union's Treaty framework should comprise the Charter of Fundamental Rights as its inherent part.

It is encouraging that , in terms of constitutional coherence, the incorporation of the EU Charter on Fundamental Rights has been juxtaposed to the Union's accession to the European Convention on the Protection of Human Rights. The solution being suggested implies that the Union's respect to human rights gets rocksolid checks and balances, both internal and external ones. The former will be guaranteed by the jurisprudence of the European Court of Justice in Luxembourg, the latter then by the European Court of Human Rights in Strassbourg. An effective and unquestionable judicial review potential appears to become the more indispensable the more trustworthy 'Area of Freedom, Security and Justice' we are determined to promote. In this context, let's remind ourselves of a little example. This Plenary expressed in June an overwhelming support for Europol agency to be bestowed upon with operational powers.

As to the techniques for the incorporation of the EU Charter into the Treaties, which the Working Group outlined, i. e. the Charter constituting a direct part of the Treaties or the Charter annexed to the Treaties as a Protocol, an overriding purpose here is to ensure that the Charter will enjoy a legal status encompassing all basic features of Community legislation, in other words a direct effect, supremacy over national law and European Court of Justice's jurisprudence. I prefer the Charter to be a direct part of the Treaties because this alternative gives rise to greater overall consistency as far as all constitutional sources of the protection of fundamental freedoms and rights are concerned.

The former Convention Presidium's Commentary accompanying the Charter should get, in my view, a status of more authoritative value of interpretation because courts, I suppose, will use it anyway as their guidelines while applying Charter's provisions. This is yet another opportunity how to deepen legal certainty amidst legal profession and the public.

The nature of Union's accession to the European Convention of Human Rights should not fall prey to political expediency. Union's possibility of being conferred upon a single legal personality can only be helpful in finding an appropriate form for its accession to the European Convention of Human Rights. In this context, two procedural methods are mentioned: a functional accession as opposed to a full one. The latter option presents the Union with a more transparent institutional position. Firstly, it can participate directly in external control of the European Convention of Human Rights system while Council of Europe's Committee of Ministers supervising e. g. good execution of sentences. Secondly, a full accession enables the Union to act as a defendant before the Strassbourg Court which is of paramount importance since several EU's institutions tend to bear responsibility in legislating. Thirdly, a full accession in the first place can prevent an embarrassing prospect of

ECJ to go before the Strassbourg Court from happening when a complaint on the violation of a due process (Art. 6 of the European Convention of Human Rights) should be at stake.

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