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# EU's Accession to the ECHR: Challenging the Relationship between the ECtHR and the CJEU

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The thesis examines European Union's [EU's] accession to the European Convention on Human Rights, from now on referred to as the ECHR. More specifically, the purpose of the thesis was to see how a possible future accession to ECHR by the EU challenges the norm hierarchy between the two European Courts, namely the European Court of Justice [CJEU] and the European Court of Human Rights [ECtHR]. Moreover, the purpose of the thesis was likewise to see the effect of how an accession to the ECHR might have on the protection against discrimination of same-sex marriages in Europe.

The following research questions were used to reach the purpose of the paper: 'Would the EU's ratification of the ECHR change the norm hierarchy between the ECtHR and the CJEU?' and 'What legal impact, if any, would the EU's accession to the ECHR have on the law relating to non-discrimination and same-sex marriage in the EU?'. Accordingly, to answer the research questions, the methodology used in this thesis was the legal dogmatic method in order to determine *de lege lata* when it comes to how the norm hierarchy might play out if the accession was made today and to determine *de lege lata* of the effect that the accession has on the treatment of the protection of non-discrimination in relation to same-sex marriages in the EU. However, arguments *de lege ferenda* are also provided in this thesis.

The relationship between EU-law and the ECHR is treated as a horizontal relationship in the paper, meaning that they are two independent sources and thus not a vertical relationship which means that it otherwise would be that one of the sources would be subordinate to the other. As already noted, this is also one of the purposes of the thesis to investigate if the accession would challenge the horizontal relationship between the two European courts.

Firstly, the reasons for the EU's accession to ECHR were provided, which concerns the need for external supervision and the creation of minimum protection. The need for external supervision relates to upholding human rights by the EU and its Member States in order to get individual remedies against unfair actions or violations of human rights by the EU institutions. Thus, this is argued to signal that the EU is not above the law and cannot derogate from human rights obligations. Moreover, concerning external supervision, the competence of the EU to accede to the ECHR and the conferral of power to the EU was mentioned where the EU is obliged to accede to the ECHR. The paper argues that the accession to ECHR would fill the gap in protecting human rights within the EU. As to the situation today, when we have the Charter on Fundamental Rights of the European Union, the thesis argued that there is a need for alignment between the ECHR and the Charter since there are incoherences in the rights.

Secondly, the thesis introduces and examines the current protection of human rights in Europe, with a specific look at the scope of the right to non-discrimination of same-sex marriages in both ECHR and the Charter, irrespectively, and how both CJEU and ECtHR have treated the subject. It finds that the scope of protection is more extensive in relation to the ECHR and interpreted by the ECtHR, which focuses on the applicant's personal situation and the European consensus on the matter. In contrast, the scope of protection in the Charter and interpreted by

the CJEU is smaller and the focus and objectives that the CJEU relates to other rights, such as the free movement of persons. All the aforementioned is concluded by analysing different cases and what the different articles entail that protects against discrimination. Thus, the thesis concludes that an accession of the EU to the ECHR would most probably constitute a coherent and stronger protection for the right to non-discrimination of same-sex marriages since the CJEU would be bound by the reasoning of the ECtHR, which takes in the personal situations of the applicants. However, essential to note is that the paper also claims that it is ambiguous to precisely know the status of the rulings by the ECtHR on the EU, which will provide extensive protection of human rights.

Thirdly, the thesis examines the CJEU's Opinion 2/13 of their most recent attempt to finalise the accession of the EU to ECHR in 2013, where the CJEU rejected the Draft of Accession. The thesis concluded that one of the main reasons for the rejection was the problem of maintaining the autonomy of the legal order in the EU and its specific features. Thus, if acceding, it would mean that the ECtHR could examine if a provision of EU-law is compatible with ECHR, which CJEU argues that it should only be them that have that exclusive jurisdiction outside their jurisdiction. Therefore, the thesis also argues that CJEU fears losing control of the ruling and wants to protect its position and judicial authority. However, the thesis acknowledges that there are solutions to the CJEU's arguments on why they cannot accede to the ECHR. Additionally, in the analysis of the thesis on if the accession to ECHR changes the norm hierarchy from a horizontal state, the thesis argues that it seems like CJEU is reluctant to accede to ECHR due to the change of hierarchy, it might entail when examining the Opinion from 2013. Therefore, with the accession, the EU will be under scrutiny and follow the ECtHR, which could change the hierarchy to a vertical state, and the CJEU will be subordinate to ECtHR. However, at the same time, the thesis argues that it still can be seen as horizontal after an accession, since the accession, according to Article 6 of the TEU, requires that it shall not affect the competences of the EU.

Lastly, the thesis concludes that the accession to ECHR will ensure equal and additional protection of human rights in Europe, as seen for the protection of non-discrimination in relation to same-sex marriages in the EU; furthermore, due to the fact that the CJEU have reluctance to accede to the ECHR even though it is bound to, the relationship if acceding will stay horizontal. This is foremost because CJEU will never accept a draft to access that gives the ECtHR jurisdiction to rule over matters exclusive to CJEU.