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PRESSURE TO REFORM THE CONVENTION SYSTEM: HOW A JOINT LETTER COULD RESHAPE THE EU'S ECHR ACCESSION PATH

Posted on 3 Luglio 2025 by ***Gabriel Mitablinda***

Over the past few weeks, the European Convention on Human Rights and its Court have been at the centre of discussions. On 22 May 2025, nine European states (Austria, Belgium, Czechia, Denmark, Estonia, Italy, Latvia, Lithuania, and Poland) issued an open letter expressing concerns about the Court's caselaw on migration and asylum. The letter states that the ECtHR has interpreted and applied the Convention in an extensive manner, beyond the intention of the Contracting parties. This interpretation of the Convention limits the ability of the signatory states to effectively tackle illegal migration. In the letter, the signatories ask, for the ECtHR to allow for less stringent standards when it comes to the deportation of illegal migrants from their territories. Currently, Article 3 of the Convention protects persons from being deported to countries where they might face inhuman or degrading treatment.
Shortly afterwards, Alain Berset, the Secretary General of the Council of Europe, issued a statement welcoming discussions on reforms, but also expressing concerns about interfering with the independence of the Court. In his words, quite simply, the Court cannot bend to political cycles.
In this short post, I will highlight how these recent events could affect the

EU's accession to the Convention. Although there are no obvious connections between these developments and the accession, I believe that the current dynamics could have significant implications and potentially delay the EU's signing of the Convention even further.

Firstly, it is worth noting that the open letter does not refer to countries quitting or dismantling the convention system. While the United Kingdom did not sign the letter, more concerning discussions about its withdrawal from the Convention are taking place at an official level. Rather than quitting the Convention system, as the UK considers doing, the signatories of the letter want to initiate changes to it. Secondly, the signatories of the open letter reaffirm their commitment to the Convention system and to human rights, albeit in their own way and on their own terms.

The letter ends with following line*…"And our countries will cooperate to further this ambition*".

One thing is certain from the language of the letter, the signatory countries are committed to achieving their goal. If discussions on reforming the convention system intensify, it is more likely that the EU's accession to the convention will not be a top priority for either the EU or the Council of Europe. The EU would rather wait for the reform to be completed before signing the Convention.

The main topic of the open letter is the issue of migration, which is also one of the main issues for the EU's accession to the Convention. The application of the Convention's standards in migration cases to the EU and its Member States has created tensions between the two legal systems. The outcome of this initiative and the prospect of a potential reform will certainly be watched closely by the Luxembourg Court.

On the other hand, if the call for reform does not gain momentum, the signatory states can obstruct the EU's accession to the Convention via the Council of Ministers. The letter is signed by nine heads of government of EU member states that hold significant influence in the Council of Ministers. Hungary and the Netherlands did not sign the open letter, but similar views are being expressed by their top politicians. More recently the Dutch governing coalition fell apart over migration and asylum policies. Regardless of this, the letter was signed by a 1/3 of the EU

member States, with signs that more states share similar views. The question now is whether these developments will spill over in the EU's internal affairs, and how far are these states willing to go to achieve their aim. For example, they can obstruct the Council of Ministers from adopting a decision on the EUs accession to the convention until their demands or concerns are addressed. The intersection of these two issues is more likely to lead to a blockade...

Further delaying the prospects of accession is certainly not in the Council of Europe's interests. Since Russia was kicked out of the Council of Europe in March 2022, the budget of the Council of Europe lost one of the big contributors. The EU's accession to the Convention would make the EU an important contributor to the budget of the Convention system. The conditions rules for contribution are set out in Article 9 of the 2023 Draft Accession Agreement, which awaits to be sent to the Court of Justice of the European Union for review.

In April 2025, the Parliamentary Assembly of the Council of Europe adopted resolution 2601, urging the acceleration of the accession process. However, no significant developments have taken place since the adoption of the new Draft Accession Agreement in 2023. The ball is in the EU's court, but the EU is procrastinating over taking a decision. This is despite important developments taking place in the CFSP area following the CJEU's decisions in cases C-29/22 P and C-44/22 P KS and KD. The CJEU decided that it has jurisdiction to hear complaints related to the CFSP area, if those complaints do not concern political and strategical decisions taken by the EU institutions. This new approach creates a new layer of protection for those affected by human rights violation which result from decisions and actions taken under CFSP. At the same time, the standard for protection under the CFSP is getting closer to the standards of the Article 13 of the European Convention on Human Rights, which requires that victims of human rights violations to have access to an effective remedy. Since this issue was left unaddressed by the 2023 DAA, the EU took responsibility for resolving it internally. According to the 2023 DAA, the EU must notify the Council of Europe of any developments on this topic. However, the EU has yet to notify the Council of Europe about these

recent cases. It remains unclear whether the EU intends to expand the jurisdiction of the CJEU over the CFSP area by amending the treaties or adopting a new protocol on this issue. The positions of the Commission and of the EU member states expressed for the KS and KD cases, do not hint in any way to this option.

In conclusion, the open letter could be used to further delay the EU's accession to the Convention. In the worst-case scenario, the states that signed the letter could weaponize their votes and delay or prevent the Council of Ministers from approving the accession instruments. However, before the Council of Ministers is called to approve the EU's accession to the Convention, the Commission must ask for an opinion from the Court of Justice of the European Union. This request has not yet been made, and it is unclear when it will be made. In any case, further delays to accession or the politicisation of the process are further evidence of the rule of law crisis within the EU. This crisis is characterised by the failure of EU institutions and EU states to uphold Article 6 TEU, which expressly calls for EU accession to the Convention.

Needless to say, this is yet another call for the reform of the convention system. Some European states do not agree with the Court's methods and want to push for changes. The concerning trend is that more states blame their problems on the safeguards they put in place decades ago, to limit their powers and prevent abuses. It is highly unlikely that this "ambition", as they call it, can be addressed quickly. Such reforms, which affect the core of the Convention system, require caution and careful consideration. Nevertheless, such developments must be monitored closely to understand their true implications for the European human rights protection system as a whole.