A Tale of two European courts: Strasbourg and Luxembourg. How is the citizen protected?

DR. IVAN SAMMUT

This paper examines the legal distinction between the two European courts that are often conflated, yet are markedly different. The Court of Justice of the European Union, based in Luxembourg, is the EU's Court, but it also directly influences national legal systems. It cannot be considered an international court in the literal sense. The European Court of Human Rights in Strasbourg is an international court par excellence, belonging to the Council of Europe, yet it is more accessible to individuals. Both courts address human rights in very different ways, but the CJEU's role is more limited in Human Rights and has a wider impact on individuals beyond Human Rights. Both courts contribute to European integration in their own way, yet they cannot be compared. They may be seen as competitors, but also as partners in some respects. This paper examines the relationship between the two and how it may evolve over the next decade or so. It examines the court from both individual and systemic perspectives, focusing on its contribution to stability and the rule of law. Finally, the paper examines how the possible relationship between the two can evolve in the individual's interest.

1. Introduction

Students, lawyers, the media, and the public often refer to the European Court, but many miss the points that make it a European court: how many European courts are there, and which one are they referring to? Let us start with European first. What is European? Europe is not a nation or a country but a continent. Any nation, state, or institution can be described as European if it is in Europe, whether in Athens, Lisbon, Helsinki, or on the European side of Istanbul. Hence, by a European court, one would understand a court that is in Europe and belongs to more than one nation or state of Europe; for a court in Athens whose jurisdiction is EU/Greek law would be described as Greek, in Lisbon as Portuguese, and so on with this definition in mind, that leaves the courts of European organisations that can be classified as European. Hence, this leaves the Court of Justice of the European Union in Luxembourg[113] and the European Court of Human Rights in Strasbourg[114]. The former is an EU institution established by the Treaty of Rome 1957[115], while the latter is a court annexed to the Council of Europe, whose jurisdiction is the European Convention on Human Rights[116]. So when one refers to a European Court, one would probably mean either of these two courts. So, which court would one be referring to? The answer depends on what one has in mind. For those who would refer to the court as the Guardian of individual Human rights, the one to which one can go after exhausting all possible adequate local remedies is the Strasbourg court. If one were referring to proper European Union law, which serves as the highest court for interpreting and ensuring uniformity of European Union law, then one would be referring to the Luxembourg

[113] https://curia.europa.eu/site/ last visisted on 15 February 2026
[114] https://www.echr.coe.int/ last visited on 15 February 2026
[115] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A11957E%2FTXT last visited on 15 February 2026
[116] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.echr.coe.int/documents/d/echr/convention_ENG last vistied on 15 February 2026

court. These courts both fit the definition of European courts, yet they are very different from each other, making comparison difficult.

2. A domestic and an international court, yet both European.

As explained in the previous section, the main similarity between these two courts is that they both fall under the definition of the European Court. However, in fact, they are very different in nature and objective. The main difference is the result: the organisation they serve is much different. The Council of Europe is an international organisation par excellence, founded by European nations at the end of the Second World War, with the main objective of promoting democracy, the rule of law, and human rights in Europe[117]. The Council of Europe's main institution is the Council of Europe Assembly, based in Strasbourg. However, the Council of Europe is also well known for implementing the European Convention on Human Rights.[118] This Convention allows citizens and residents of the member states of the Council of Europe to petition the European Court of Human Rights if a state fails to provide adequate remedies for human rights enshrined in the European Convention on Human Rights.

The Convention on Human Rights is intended to protect the rights of individuals and organisations, and Council of Europe members pledge to uphold its principles in their own legal systems. However, when this failed, the European Court of Human Rights, as a supervisory international court, exercises jurisdiction over the member states of the Council of Europe and serves as the final guarantor of the protection of individual rights. The court hears applications alleging that a contracting state has breached one or more of the human rights enumerated in the Convention or its optional protocols to which a member state is a party. Hence, after the exhaustion of local adequate remedies and individual can petition the Court of Human Rights, so that the courts will examine whether the individual suffered any breaches, and if the court finds that individuals of all breaches, it can offer financial compensation as well as invite the applicable member states to address violations and provide substantive remedies, if possible. The court was established in 1959. An application can be lodged by an individual, a group of individuals, or one or more of the other contracting states. Aside from judgments, the court can also issue advisory opinions. The Convention was adopted within the context of the Council of Europe, and all of its 46 member states are contracting parties to the Convention. The court's primary means of judicial interpretation is the living instrument doctrine, meaning that the Convention is interpreted in light of present-day conditions. International law scholars consider the ECtHR the most effective international human rights court. Nevertheless, the court has faced challenges with verdicts that the contracting parties have failed to implement.

While the Strasbourg court clearly falls within the definition of an international court, the Luxembourg court is somewhat more complicated, as whether it is an international court depends on how one defines EU law. The European Union can be described as a 'club' of sovereign Member States and sovereign citizens. These two levels of membership governance are both autonomous yet dependent on each other, as an EU citizen can only be so if they are a citizen of a Member State. When states join the Union, they do not give up their sovereignty. They remain fully sovereign states, unlike Scotland, which joined England to form the United Kingdom, or Vermont, which chose to join the United States. Scotland and

[117] https://www.coe.int/en/web/portal last visited on 15 February 2026

[118] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.echr.coe.int/documents/d/echr/convention_ENG last vistied on 15 February 2026

Vermont are no longer subject to International Law in their own right, but are constituent parts of other sovereign countries, namely the UK and the USA. When the original six Member States formed the then-EEC, they remained completely sovereign. However, one needs to keep in mind that, just as when a natural person joins a club, the natural person remains a fully free citizen, but, within the club, is expected to follow its rules. Hence, football players who join a club are expected to wear the club's official football gear when playing for the club and cannot choose their own colour. If they do not like the colour, they can leave. Not having the option to choose your style when you are part of the team does not make you less sovereign. One joins the team of one's own free will because one is better off within the club than on one's own. Certain objectives can only be achieved through teamwork, and the same goes for a mix of small and medium-sized sovereign states that want to compete economically and, perhaps, politically in the global arena, and to form what we now call the Internal Market.

When a person joins the club, they agree to abide by the club's rules. Any departure from the club's rules can be a matter of shame and will be disciplined either by the club or through self-discipline. The same analogy can be extended to Member States that depart from EU law. If a Member State joins the club, i.e., the EU, it chooses the club's rules, which prevail over its own rules not because the club's rules are superior (as one might think), but because it chose to do so. National courts are entrusted with upholding the club rules (such as self-discipline), and states may be subject to enforcement actions under Article 258 of the Treaty on the Functioning of the European Union (TFEU)[119]. Ultimately, there is peer political pressure to abide by the rules. Not abiding by the rules is a lack of collegial respect that threatens the club's harmony. When a Member State joins the EU, it consents to give priority to the club's rules. It is a necessity, a common sense, for a union or a club to function. The intention is to give priority to the club rules, and any potential conflict should be considered an unintentional error. EU law and the EU institutions are NOT external; they complement national institutions shared with the other Member States. The moment a Member State wants to put a stop to all this, it can be done easily, though not without economic and political consequences. A Member State can leave. The UK was one of the best-behaved Member States on the legal front.

While not going into the merits of Brexit, from a legal perspective, the UK made a good choice to leave once it did not like certain rules. However, as long as a Member State is in the club, it is natural and common sense that the club rules prevail. Prevail by 'common sense and not by superiority'. EU law is not superior to domestic law; it is a form of domestic law in its own right. The CJEU (Court of Justice of the European Union) should not be confused with the ECtHR (European Court of Human Rights). The CJEU is not an international supervisory court; it is a national institution, through membership of the club, which the other Member States share. The EU institutions are not a kind of Privy Council that used to dictate to colonies such as Malta during the British colonial period.

A sovereign country is free to sign international treaties. Treaty obligations must be respected, but this merely means that the state cannot invoke national law as an excuse for failing to perform its obligations under the Treaties it has signed with other contracting parties. States are left to their own devices to determine the most appropriate domestic arrangements to fulfil their international obligations. So one can say there is internal

[119] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT last visited on 15 February 2026

supremacy over treaties, and other aspects of their domestic status are a matter of national law. As a result, two theories evolved to demonstrate the relationship between domestic law and international treaties. The monist view, as expressed, for instance, by Kelsen, is that national legal orders are 'creatures' of international law. The dualist view, as presented by Treipel and Anzilotti, is somewhat more convincing when they show that national legal orders are distinct legal orders able to resist the penetration of international norms.

What are the consequences of these two different worlds vis-à-vis European Law? Is European Union law a branch of International Law? It makes sense to answer the latter question first rather than the former. The answer is not found in the Treaties but in the landmark judgment of the Court of Justice of the European Union (CJEU) of *Van Gend en Loos*. The CJEU said:

The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is the direct concern to the interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between contracting states . . . It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights ….

The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals[120].

The CJEU established that EU law is a separate legal order from that of the Member States. Also, EU law is derived from International law. In this case, the relevant International Law is found in the EEC Treaty and, following Maastricht, also in the EU Treaty. From this and subsequent judgments of the CJEU, the doctrines of direct effect and primacy are sometimes described in a misleading way as the supremacy of EU law has developed. Direct effect can be defined as the capacity of a norm of EU law to be applied in domestic court proceedings. Supremacy, or more correctly, the primacy of EU law, implies the capacity of that norm of EU law to overrule inconsistent norms of national law in domestic court proceedings. These two principles are closely linked and can be considered together. However, it could be argued that the principle of supremacy has much broader implications than direct effect, as it may mean the setting aside of national laws in favour of EU law. In the same way, national law can be set aside because of a superior or a priority national law, (In Malta as an example, Chapter 319, the European Convention Act prevails over ordinary law), national law can also be set aside because of a superior or a priority national law (in this case Chapter 460 the European Union Act prevailing over other national law).[121]

Despite the very close link between direct effect and supremacy/primacy, the issue was not addressed in *Van Gend en Loos*, as the referring Dutch Court did not raise it. The close link has been examined in a subsequent judgment of the CJEU in *Costa v ENEL*.[122] In the Netherlands, whose legal system is more monist than dualist, under Dutch Constitutional law, an international treaty is self-executing and prevails over conflicting national law; thus, the issue of supremacy was less problematic than that of direct effect. The second occasion for

[120] Case 26/62 *NV Algemene Transportem Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.
[121] https://legislation.mt/ last visited on 15 February 2026
[122] Case 6/64 *Flaminio Costa v ENEL* [1964] ECR 585, 593

the CJEU to reaffirm the principle of the supremacy/primacy of Community law (now EU law) arose from Italy, a Member State that adopts a dualistic approach vis-à-vis international law. The case concerned the payment of electricity bills to the state-owned company ENEL, which has been nationalised, in breach of the TFEU. The national court was asked to set aside a national law (that nationalised the electricity company) because it breached the TFEU, then the EEC Treaty. The Italian Government intervened in the case, arguing that the national court's reference was 'inadmissible', as the national court that referred lacked, under EU and national law, the power to set aside Italian municipal law. The Government argued that a question on interpretation could not serve a useful purpose.

The CJEU's task in the latter case is much more delicate than the former. Whereas the definition of the conditions of direct effect may easily be considered, under the canons of international law, as an inherent part of the interpretation function of the CJEU, the same cannot be said about supremacy. It is indeed an established principle of International law that international treaties prevail over domestic law when it is applied to relations between powers. However, the issue in *Costa v ENEL* is about the internal supremacy of EU law. This is the duty of national courts to enforce an international treaty when it conflicts with national legislation. Such a duty has never been considered as part of International law. However, the failure of international courts could be a contributory factor in establishing State responsibility under international law.

Wyatt[123] explains that in Costa, the preliminary reference mechanism allowed the CJEU to 'stop the clock'. Instead of referring the matter to national judges for what would be a breach of EU law, to be sanctioned under Article 258 TFEU, the CJEU seized the opportunity provided by Article 267 TFEU and decided to make EU law prevail over conflicting national norms. The special feature of the TFEU under Article 267 is that, unlike other treaties, it provided for an ingenious judicial mechanism that allowed the CJEU to state its supreme doctrine and to request that national courts follow suit. In the CJEU's own words:

It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.

3. The Court and I – What is in it for me personal

When one looks at the two European courts from a personal perspective, the above difference becomes very clear. The ECtHR is built around the individual application. A person can take their state to court to defend themselves against violations of the ECHR by the same state. The CJEU is not a human rights court as such. It is the Court of the EU. The ECHR is a

[123]Wyatt D., 'New Legal Order, or Old?' (1982) 7147, 153.

general principle of EU law, and the Charter of Fundamental Rights[124] has the status of an EU Treaty, which the CJEU can interpret and apply, but that does not make it a Human Rights Court in the mould of the ECtHR. It is the EU's Court that protects individual rights, albeit in a more limited way, in the context of EU law. That does not make it at par or in competition with the ECtHR.

The ECtHR is primarily established to hear individual petitions. First, one needs to exhaust adequate local remedies available in the national court system under the European Convention and other constitutional documents protecting human rights, as they may be provided in the national legal system. Only after exhausting adequate remedies and giving the local system a chance to address the human rights issue can one petition Strasbourg directly. An individual can either personally deliver the applicable application to the Court in Strasbourg or have it delivered by his/her representative. The court is designed to handle individual applications and serves as the final arbiter of human rights violations in the member states of the Council of Europe. The individual is the court's primary focus.

While Strasbourg courts focus on the individual, Luxembourg's courts' main mission is the final, highest-level interpretation of European Union law and the uniform interpretation and application of EU law across the member states. It is also the final Guardian of the EU treaties and serves as a court of law for any disputes between the club's own institutions and its Member States. As regards individual applications, it is possible to apply directly to the General Court of the CJEU. This is regulated through Article 263 TFEU, as long as you satisfy the *Plaumann* doctrine. Under Article 263(4) TFEU, individuals (natural or legal persons) may directly challenge EU acts if they are the addressee, if the act is of direct and individual concern to them, or if it is a regulatory act directly concerning them without implementing measures. The test is restrictive, requiring proof that the measure directly affects their legal situation; it is often referred to as the Plaumann test for individual concern (a specific, closed group). The Court of Justice held that *Plaumann & Co*[125] had no standing for judicial review of the Commission decision because the firm was not "individually concerned". Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually, just as in the case of the person addressed. In the present case, the applicant is affected by the disputed decision as an importer of clementines, that is to say, by reason of a commercial activity which may at any time be practised by any person and is not therefore such as to distinguish the applicant in relation to the contested decision as in the case of the addressee.

Another avenue by which an individual may indirectly access the CJEU is via Article 267 TFEU, the preliminary reference procedure. Article 267 of the Treaty on the Functioning of the European Union (TFEU) does not allow individuals to apply directly to the Court of Justice of the European Union (CJEU). It instead establishes a cooperative mechanism where individuals can request that a national court or tribunal refer questions on the interpretation or validity of EU law to the CJEU. Individuals can ask a national judge to refer a question to the CJEU during a local dispute. National courts decide whether to refer, though courts of last instance are generally obligated to do so, unless an exception applies. The process ensures the

[124] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT last visited on 15 February 2026

[125] Case 25/62 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61962CO0025 last visited on 15 February 2026

uniform application of EU law. The CJEU rejects direct requests from individuals. Proceedings are free of charge, with urgent procedures (PPU) available for specific cases. If a national court refuses to refer, individuals cannot appeal directly to the CJEU. However, they may challenge this via national remedies or, for last-instance courts, via *Köbler*[126] damages actions.

4. The Courts and European Integration, Partners or Rivals – the way forward.

Both courts contribute to European integration in their own ways. Both contribute to the strengthening of the rule of law, democracy, and Human Rights on the European continent. Both overlap in some areas of law and in some jurisdictions. Nevertheless, each court has its own specific tasks and objectives. Both courts are necessary to shape the European continent we have today. In light of this, one can see the courts as more of partners than of rivals, and they can work together in different ways to help meet each other's objectives. The more the courts cooperate, the stronger the rule of law in Europe becomes.

One typical example of how the courts can independently ensure the relevance of the other is that sometimes the Strasbourg court has been instrumental in finding breaches of Article 6 ECHR (right to a fair hearing) when a national court has been obliged to make a preliminary reference under Article 267 TFEU and has failed to do so. The European Court of Human Rights (ECtHR) has found a violation of Article 6 § 1 ECHR (Right to a Fair Trial) in several cases in which a national court of last resort refused to refer a preliminary question to the Court of Justice of the European Union (CJEU) without providing adequate reasoning. Under the ECtHR's established doctrine, while there is no absolute right to a preliminary reference, a refusal becomes arbitrary and violates Article 6 if the domestic court fails to justify its decision in light of the CILFIT criteria—specifically, whether the question is irrelevant, the EU law provision has already been interpreted (*acte éclairé*), or the correct application is so obvious as to leave no reasonable doubt (*acte clair*). Following the landmark *Ullens de Schooten and Rezabek v. Belgium* (2011) judgment (which itself found no violation because the reasons given were sufficient)[127], the ECtHR clarified that Article 6 § 1 imposes a duty on national courts to give reasons for non-referral. This duty is particularly strict for courts of last instance. To invoke Article 6 before the ECtHR, the parties must have explicitly requested a preliminary reference and substantiated their request with precise reasons. The ECtHR does not review whether the national court erred in interpreting EU law; it only ensures that the refusal was accompanied by "demonstrative reasoning" aligned with CJEU jurisprudence. It is insufficient for a court to state that a question "had been examined merely." The reasoning must indicate which CILFIT exception justifies the refusal.

The table below presents five cases in which the ECtHR examined possible violations of Article 6 ECHR arising from a national court's failure to make a preliminary reference under Article 267 TFEU.

[126] Case C-224/01 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62001CJ0224 last visited on 15 February 2026

[127] *Apps nos. 3989/07 and 38353/07* https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108382%22]} last visited on 15 February 2026

Case	Year	Finding
Dhahbi v. Italy[128]	2014	The first case where the ECtHR found a violation. The Italian Court of Cassation ignored the applicant's request to refer and provided no reasons for its refusal.
Schipani and Others v. Italy[129]	2015	A violation was found because it was unclear from the judgment whether the request was deemed irrelevant, if the *acte clair* doctrine applied, or if the court ignored the request.
Sanofi Pasteur v. France[130]	2020	The ECtHR found a violation because the highest national court failed to give proper reasons for refusing to refer preliminary questions.
Georgiou v. Greece[131]	2023	A violation was found because the Greek court rejected a request for a preliminary reference without addressing or even mentioning it in the final decision.
Baltic Master v. Lithuania[132]	2019	Part of a line of cases where the ECtHR employed a strict test regarding the reasoning required for refusal.

The obligation of national courts to seek preliminary reference from the Court of Justice of the EU (CJEU) is a long-debated topic. In EU law, it is framed as an issue with two players: a national court and Luxembourg. In recent case law, the European Court of Human Rights (ECtHR) has made it clear that it, too, has a say in the matter. In *Georgiou v. Greece* (14 March 2023), the ECtHR found a violation of Article 6 of the European Convention on Human Rights (the Convention) on the ground that a Greek Court had not referred questions to the CJEU—the case concerned the sovereign debt crisis. The applicant was the president of the Hellenic Statistical Authority (ELSTAT). In 2010, the applicant transmitted data on the Greek deficit for 2009 to Eurostat. The applicant had not presented the data for approval to the seven-member administrative board of ELSTAT in advance. The applicant claimed that his actions complied with the principle of professional independence in the European Statistics Code of Practice. Nevertheless, criminal proceedings were instituted against the applicant for breach of duty, and he was found guilty. In the court of last resort, the applicant requested a preliminary ruling from the CJEU. Two issues were especially important for the ECtHR. First, it was decisive that the national court in question was a court of last instance. Second, the applicant requested that the national court refer questions to the CJEU, but neither did so nor gave any reasons. The judgment is important as a reminder that EU law

[128] App 1720/09 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-142504%22]} last visited on 15 February 2026
[129] App 38369/09 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-156258%22]} last visited on 15 February 2026
[130] App 25137/16 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-201432%22]} last visited on 15 February 2026
[131] App 57378/18 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-223435%22]} last visited on 15 February 2026
[132] App 55092/16 https://hudoc.echr.coe.int/fre/#{%22itemid%22:[%22001-192467%22]} last visited on 15 February 2026

does not operate in a bubble. The preliminary reference procedure is significant for the right to a fair trial.

On a completely different note, one would also need to examine the relationship between the two European human rights courts and whether the EU, as a club, would eventually accede to the ECHR. On 18 December 2014, in response to a reference from the European Commission, the Court of Justice gave its opinion on the European Union's accession to the ECHR.[133] Among other factors, the Court of Justice noted that doing so would give an external body the power to review the application of EU law. The CJEU gives the ECHR "special significance" as a "guiding principle" in its case law. The European Court of Justice applies a set of general principles of law to guide its decision-making. One such principle is respect for fundamental rights, seen in Article 6(2) of the Treaty Establishing the European Union: "The Union shall respect 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, as general principles of Community law." Within this framework, the CJEU uses all treaties that the Member States of the European Union have signed or participated in as interpretive tools for the content and scope of "fundamental rights", while holding the European Convention on Human Rights as a document with "special significance." The EU is bound to respect fundamental rights principles. This means that the institutions of the EU must not violate human rights, as defined by EU law, and also that the Member States of the EU must not violate EU human rights principles when they implement Union legislation or act pursuant to Union law. This obligation is in addition to the Member States' pre-existing obligation to comply with the ECtHR's rulings in all their actions. In practice, this means that the Court of Justice weaves the Convention principles throughout its reasoning.

In Opinion 2/13, the CJEU held that the EU could not accede to the ECHR under the Draft Agreement. It held that the Agreement was incompatible with TEU Article 6(2). Its reasons suggested the Draft Agreement (a) undermined the Court of Justice's autonomy; (b) allowed for a second dispute resolution mechanism among Member States, against the treaties; (c) the "co-respondent" system, which allowed the EU and a Member State to be sued together, allowed the ECtHR to illegitimately interpret EU law and allocate responsibility between the EU and Member States; (d) did not allow the Court of Justice to decide if an issue of law was already dealt with, before the ECtHR heard a case; and (e) the ECtHR was illegitimately being given power of judicial review over the Common Foreign and Security Policy. Before any analysis of the Commission's request can be undertaken, it must be noted as a preliminary point that, unlike the position under Community law in force when the Court delivered Opinion 2/94 (EU: C:1996:140), the accession of the EU to the ECHR has, since the entry into force of the Treaty of Lisbon, had a specific legal basis in the form of Article 6 TEU. That accession would, however, still be characterised by significant distinctive features.

Since the adoption of the ECHR, only State entities have been parties to it, which explains why, to date, it has been binding only on States. This is also confirmed by the fact that, to enable the EU's accession to proceed, not only has Article 59 of the ECHR been amended, but the Agreement envisages a series of amendments to the ECHR to make accession operational within the system established by the ECHR itself. Those amendments are warranted precisely because, unlike any other Contracting Party, the EU is, under

[133] Opinion 2/13, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62013CV0002 last visitd on 15 February 2026

international law, precluded by its very nature from being considered a State. As the Court of Justice has repeatedly held, the founding treaties of the EU, unlike ordinary international treaties, established a new legal order, possessing its own institutions, for the benefit of which the Member States thereof have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only those States but also their nationals (see, in particular, judgments in *van Gend & Loos,* 26/62, EU: C:1963:1, p. 12, and *Costa,* 6/64, EU: C:1964:66, p. 593, and *Opinion 1/09,* EU: C:2011:123, paragraph 65).

The fact that the EU has a new kind of legal order, the nature of which is peculiar to the EU, its own constitutional framework and founding principles, a particularly sophisticated institutional structure and a full set of legal rules to ensure its operation, has consequences as regards the procedure for and conditions of accession to the ECHR. It is precisely to ensure that that situation is taken into account that the Treaties make accession subject to various conditions. Thus, first of all, having provided that the EU is to accede to the ECHR, Article 6(2) TEU makes clear at the outset, in the second sentence, that '[s]uch accession shall not affect the Union's competences as defined in the Treaties'.

Next, Protocol No 8 EU, which has the same legal value as the Treaties, provides in particular that the accession agreement is to make provision for preserving the specific characteristics of the EU and EU law and ensure that accession does not affect the competences of the EU or the powers of its institutions, or the situation of Member States in relation to the ECHR, or indeed Article 344 TFEU. Lastly, under Article 6(2) of the Treaty on European Union, the Intergovernmental Conference that adopted the Treaty of Lisbon agreed that accession must be arranged in a way that preserves the specific features of EU law. In performing the task conferred on it by the first subparagraph of Article 19(1) TEU, the Court of Justice must review, in the light, in particular, of those provisions, whether the legal arrangements proposed in respect of the EU's accession to the ECHR conform with the requirements laid down and, more generally, with the basic constitutional charter, the Treaties (judgment in *Les Verts v Parliament*, 294/83, EU: C:1986:166, paragraph 23).

Like any other Contracting Party, it would be subject to external control to ensure the observance of the rights and freedoms the EU would undertake to respect in accordance with Article 1 of the ECHR. In that context, the EU and its institutions, including the Court of Justice, would be subject to the control mechanisms provided for by the ECHR and, in particular, to the decisions and judgments of the ECtHR. The Court of Justice has admittedly already Stated in that regard that an international agreement providing for the creation of a court responsible, for the interpretation of its provisions and whose decisions are binding on the institutions, including the Court of Justice, is not, in principle, incompatible with EU law; that is particularly the case where, as in this instance, the conclusion of such an agreement is provided for by the Treaties themselves. The competence of the EU in the field of international relations and its capacity to conclude international agreements necessarily entail the power to submit to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions (see *Opinions 1/91*, EU: C:1991:490, paragraphs 40 and 70, and 1/09, EU: C:2011:123, paragraph 74).

Nevertheless, the Court of Justice has also declared that an international agreement may affect its own powers only if the indispensable conditions for safeguarding the essential character of those powers are satisfied and, consequently, there is no adverse effect on the autonomy of the EU legal order (see *Opinions 1/00*, EU: C:2002:231, paragraphs 21, 23 and 26, and 1/09, EU: C:2011:123, paragraph 76; see also, to that effect, judgment in *Kadi and Al*

Barakaat International Foundation v Council and Commission, EU: C:2008:461, paragraph 282). In particular, any action by the bodies given decision-making powers by the ECHR, as provided for in the Agreement envisaged, must not have the effect of binding the EU and its institutions, in the exercise of their internal powers, to a particular interpretation of the rules of EU law (see *Opinions 1/91*, EU: C:1991:490, paragraphs 30 to 35, and 1/00, EU: C:2002:231, paragraph 13.

At the time of writing, in early 2026, the negotiations regarding the EU's accession to the ECHR are still ongoing. On 17 March 2023, the Draft agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted.[134] This draft agreement would allow the European Union to take part in the defence of respondent States before the European Court of Human Rights (ECtHR) through a co-respondent mechanism. Likewise, the European Union would accede to the Convention, as well as to its Additional Protocols Nos. 1 and 6, but not to No. 13, concerning the total abolition of the death penalty, even though all its Member States have already ratified it. This draft requires referral of the matter to the CJEU and a favourable opinion before the signature procedure can begin. The time between this referral and the delivery of the opinion is estimated at between 18 and 24 months. As this is an amending protocol, all States Parties to the Convention must ratify it for it to enter into force. This referral ultimately took place on 26 January 2026.[135] As this is works in progress, one would need to await how this develops and perhaps wait for another opinion from the Court of Justice.

5. Conclusion

The above offers a brief snapshot of dichotomy in the workings of the tale, in two European courts, and the prospective future. Certainly, one can conclude that the ECtHR and the CJEU are both essential institutions in the strengthening of democracy, the rule of law, and Human rights on the European continent. While they may overlap, they are essential cogs in the machinery that makes today's Europe work better. They are certainly partners, not rivals, and the prospect of working together for the same objective looks brighter than ever for the prospering of the peoples of Europe.

[134] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.echr.coe.int/documents/d/echr/UE_Report_CDDH_ENG last visited on 15 February 2026

[135] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62025CU0001 last visited on 15 February 2026