

# Back to the Drawing Board? Opinion 2/13 of the Court of Justice on the Accession of the EU to the ECHR - Case note

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*On 18 December 2014, the Court of Justice of the European Union (CJEU) has delivered its Opinion pursuant to Article 218 (11) TFEU on the EU's accession to European Convention on Human Rights (ECHR) at the request of the European Commission. Sitting in full court, the CJEU found that the draft revised agreement on the accession of the European Union to the ECHR is incompatible with EU law. This paper gives a concise overview of the judgment, and provides some critical remarks.*

*Keywords: Opinion 2/13, European Convention on Human Rights, Court of Justice of the European Union, European Court of Human Rights, Fundamental Rights, Human Rights*

## 1. Facts and background

According to Article 6 (2) TEU as amended by the Treaty of Lisbon, the Union shall accede to the European Convention on Human Rights.<sup>1</sup> The question of the European Community (EC) acceding to the ECHR was brought up also some time ago, but the Court of Justice has found in its opinion 2/94 that the EC did not possess the necessary competence to accede.<sup>2</sup> The Treaty of Lisbon has introduced an express legal basis for the EU to accede to the ECHR – the actual accession needs to be regulated in a special international agreement. The Council of Europe Member States also had to modify the ECHR in order to enable the EU to accede; this was done via Protocol No. 14 to the Convention.<sup>3</sup>

Primary EU law essentially lays down two legal requirements regarding the accession:

- the accession shall not affect the Union's competences as defined in the Treaties [Article 6 (2) TEU];
- 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 Article 344 TFEU<sup>4</sup> (Protocol No 8 attached to the EU Treaty).

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<sup>1</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (1950). ETS No. 005.

<sup>2</sup> Opinion 2/94 of the Court of Justice. [ECR 1996 I-01759]

<sup>3</sup> Available at <http://conventions.coe.int/treaty/en/treaties/html/194.htm>. See also the related Madrid Agreement on the provisional application of certain provisions of Protocol No. 14 pending its entry into force (<http://conventions.coe.int/treaty/en/treaties/html/194-1.htm>)

<sup>4</sup> According to Article 344 TFEU, the Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein.

Additionally, in the Declaration on Article 6 (2) of the Treaty on European Union, the Intergovernmental Conference which adopted the Treaty of Lisbon agreed that accession must be arranged in such a way as to preserve the specific features of EU law.

The Draft revised agreement on the accession of the European Union, regulating the institutional and legal aspects of accession, was finalised in 2013.<sup>5</sup> It was the European Commission that requested the opinion of the Court of Justice. The significance of the issue is underlined by the fact that the European Parliament, the Council, the Commission and twenty-four Member States submitted observations in the procedure. The Commission's initial request for an opinion already contained its view that the Draft Agreement is compatible with primary EU law; the Austrian, Belgian, Bulgarian, Czech, Cypriot, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Slovak, Spanish, Swedish and United Kingdom governments, and the Parliament and the Council essentially all agreed, even if their reasoning did differ to some extent.<sup>6</sup>

## 2. The View of the Advocate - General

Following a long and detailed analysis on the basis of the legal criteria contained in Article 6 (2) TEU and Protocol No. 8 and in the light of Declaration No. 2, Advocate-General Kokott has reached the conclusion that the draft agreement contained nothing that could fundamentally call into question the compatibility of the proposed accession of the EU to the ECHR – Kokott was of the opinion that the draft agreement merely required ‘some relatively minor modifications or additions, which should not be too difficult to secure.’ Kokott proposed that the Court of Justice declare that the draft agreement is compatible with the Treaties, provided that certain modifications, additions and clarifications are made. Particularly, she pointed out the following necessary changes:

- . Having regard to the possibility that they may request to participate in proceedings as co-respondents pursuant to Article 3 (5) of the draft agreement, the European Union and its Member States are systematically and without exception informed of all applications pending before the European Court of Human Rights (ECtHR), in so far and as soon as these have been served on the relevant respondent.
- . Requests by the EU and its Member States to become co-respondents shall not be subjected to any form of plausibility assessment by the Strasbourg court.
- . The prior involvement of the CJEU must extend to all legal issues relating to the interpretation, in conformity with the ECHR, of EU primary law and EU secondary law.
- . The conduct of a prior involvement procedure pursuant may only be dispensed with when it is obvious that the CJEU has already dealt with the specific legal issue raised by the application pending before the ECtHR.
- . The principle of joint responsibility of respondent and co-respondent does not affect any reservations made by contracting parties within the meaning of Article 57 ECHR.

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<sup>5</sup> Draft accession agreement of the European Union to the European Convention on Human Rights

[http://www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Meeting\\_reports/47\\_1%282013%29008rev2\\_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Meeting_reports/47_1%282013%29008rev2_EN.pdf) (10 March 2015).

<sup>6</sup> Opinion 2/13, Paras. 108-109.

- Finally, the ECtHR may not otherwise, under any circumstances, derogate from the principle of the joint responsibility of respondent and co-respondent for violations of the ECHR found by the ECtHR.<sup>7</sup>

### 3. The Judgment of the Court

The judgment of the Court, however, reached a different conclusion.

First, the Court determined that the case was admissible: the Court noted that the subject-matter of the request was an agreement envisaged within the meaning of Article 218 (11) TFEU, and that the Commission has submitted to the Court of Justice the draft accession instruments on which the negotiators have already reached agreement in principle: those instruments together constitute a sufficiently comprehensive and precise framework for the arrangements in accordance with which the envisaged accession should take place, and thus enable the Court to assess the compatibility of those drafts with the Treaties.<sup>8</sup> Some Member States have raised the issue whether the admissibility of the case is affected by the fact that the internal rules on the EU's involvement in the ECHR have not yet been adopted. The Court was of the standpoint that even if they were already adopted, the internal rules could not be subject to review by the Court pursuant to Article 218 (11) TFEU – they were deemed irrelevant to the case as the competence of the Court in this regard is strictly limited to the review of the envisaged international agreement in question.<sup>9</sup>

As to the substance of the case, the Court of Justice started out by providing, as preliminary considerations, some general remarks on the nature and characteristics of EU law and the EU: it has pointed out that the EU is precluded by its very nature from being considered a state. The Court reiterated in this regard that 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.<sup>10</sup> The essential characteristics of EU law have given rise to a structured network of principles, rules and mutually interdependent legal relations linking the EU and its Member States, and its Member States with each other, which are engaged in a 'process of creating an ever closer union among the peoples of Europe'. The Member States all recognize certain common values, upon which the EU itself is founded (as listed in Article 2).<sup>11</sup> The Court also stressed that the autonomy of EU law in relation to the laws of the Member States and in relation to international law requires that the interpretation of the fundamental rights (which are the heart of the Union's legal structure) is ensured within the framework of the structure and objectives of the EU.<sup>12</sup>

The Court then went on to review, in the light, in particular, of Article 6 (2) and Protocol No. 8, whether the legal arrangements proposed in respect of the EU's accession to the ECHR were in conformity with

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<sup>7</sup> View of Advocate General Kokott. Opinion procedure 2/13, paras. 278-280.

<sup>8</sup> Para. 148.

<sup>9</sup> Paras. 149-151.

<sup>10</sup> Paras. 156-157.

<sup>11</sup> Paras. 167-168.

<sup>12</sup> Para. 170.

the requirements laid down and, more generally, with the EU's 'basic constitutional charter', the Treaties.<sup>13</sup>

### 3.1. The special characteristics and the autonomy of EU law

#### 3.1.1. Article 53 of the Charter

The Court noted that, should the EU accede to the ECHR, it would, like any other Contracting Party, be subject to external control to ensure the observance of the rights and freedoms enshrined in the ECHR, subjecting the EU and its institutions to the control mechanisms provided for by the ECHR and to the decisions and the judgments of the ECtHR. Conversely, the interpretation by the Court of Justice of a right recognised by the ECHR would not be binding on the control mechanisms provided for by the ECHR, particularly the ECtHR. The Court of Justice pointed out that Article 53 of the Charter provides that nothing therein is to be interpreted as restricting or adversely affecting fundamental rights as recognised, in their respective fields of application, by EU law and international law and by international agreements to which the EU or all the Member States are party, including the ECHR, and by the Member States' constitutions. The Court of Justice has interpreted this provision as meaning that the application of national standards of protection of fundamental rights must not compromise the level of protection provided for by the Charter or the primacy, unity and effectiveness of EU law.<sup>14</sup> On the other, Article 53 of the ECHR essentially reserves the power of the Contracting Parties to lay down higher standards of protection of fundamental rights than those guaranteed by the ECHR. According to the Court of Justice, that provision should be coordinated with Article 53 of the Charter, as interpreted by its own case law, so that the power granted to Member States by Article 53 of the ECHR is limited — with respect to the rights recognised by the Charter that correspond to those guaranteed by the ECHR — to that which is necessary to ensure that the level of protection provided for by the Charter and the primacy, unity and effectiveness of EU law are not compromised. The agreement, however, contained no such provision.

#### 3.1.2. Mutual trust

The principle of mutual trust between the Member States is of crucial in EU law: it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law. According to the Court of Justice, the approach of the draft agreement envisaged, which is to treat the EU as a State and to give it a role identical in every respect to that of any other Contracting Party, disregards the intrinsic nature of the EU and fails to take into consideration the fact that the Member States have, by reason of their membership of the EU, accepted that relations between them as regards the matters covered by the transfer of powers from the Member States to the EU are governed by EU law to the exclusion, if EU law so requires, of any other law. The ECHR would require the Member States of the EU in their relations with each other to check whether another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between

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<sup>13</sup> Para. 163. The Court first referred to the EEC-Treaty as the basic constitutional charter in the *Les Verts* judgment. [Case 294/83 *Les Verts v. Parliament*]

<sup>14</sup> Melloni para. 60.

those Member States. Thus the accession is liable to ‘upset the underlying balance’ of the EU and undermine the autonomy of EU law, and the draft agreement does not contain any provision to avert such developments.

### 3.1.3. Advisory opinions and preliminary rulings

Protocol No. 16 to the ECHR establishes an advisory opinion mechanism: it permits the highest courts and tribunals of the Member States to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms guaranteed by the ECHR or its protocol. On the other hand, EU law requires the same national courts or tribunals to submit a request to that end to the Court of Justice for a preliminary ruling under Article 267 TFEU regarding EU law. Even though the draft agreement does not foresee the EU acceding to Protocol No. 16, according to the Court of Justice the mechanism established by the protocol could affect the autonomy and effectiveness of the preliminary ruling procedure (notably where the issue concerns rights guaranteed by the Charter corresponding to those secured by the ECHR): it cannot be ruled out that a request for an advisory opinion under Protocol No. 16 by a court or tribunal of a Member State that has acceded to that protocol could trigger the procedure for the prior involvement of the Court of Justice, thus creating a risk that the preliminary ruling procedure might be circumvented. The draft agreement does not address this issue.

Summarizing the abovementioned points, the Court of Justice held that the accession of the EU to the ECHR as envisaged by the draft agreement is liable adversely to affect the specific characteristics of EU law and its autonomy.

## 3.2. Article 344

The Court has stressed that in line with its jurisprudence, an international agreement cannot affect the allocation of powers fixed by the Treaties or the autonomy of the EU legal system and the respective powers of the Court, a principle enshrined in Article 344 TFEU, according to which Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein.

In the Court’s view, the fact that Article 5 of the draft agreement provides that proceedings before the Court of Justice are not to be regarded as a means of dispute settlement which the Contracting Parties have agreed to forgo in accordance with Article 55 of the ECHR is *not* sufficient to preserve the exclusive jurisdiction of the Court of Justice: Article 5 of the draft agreement merely reduces the scope of the obligation laid down by Article 55 of the ECHR, but still allows for the possibility that the EU or Member States might submit an application to the ECtHR, under Article 33 of the ECHR, concerning an alleged violation thereof by a Member State or the EU in conjunction with EU law. Accordingly, the fact that Member States or the EU are able to submit an application to the ECtHR is liable in itself to undermine the objective of Article 344 TFEU and goes against the very nature of EU law.

### 3.3. The co-respondent mechanism

The Court also found the co-respondent mechanism to be problematic, as in its current form, the ECtHR would be required to assess the rules of EU law governing the division of powers between the EU and its Member States as well as the criteria for the attribution of their acts or omissions, in order to adopt a final decision (binding both on the Member States and on the EU) as regards the admissibility of requests to apply the mechanism.

Furthermore, if the ECtHR establishes a violation in respect of which a Contracting Party is a co-respondent to the proceedings, the respondent and the co-respondent are to be jointly responsible for that violation. According to the Court, this provision does not preclude a Member State from being held responsible, together with the EU, for the violation of a provision of the ECHR in respect of which that Member State has made a reservation. This would affect the situation of Member States in relation to the ECHR – a situation which is contrary to what Article 2 Protocol No. 8 requires in this regard.

Thirdly, the Court found that the fact that Article 3 (7) of the draft agreement allows for an exception to the general rule that the respondent and co-respondent are to be jointly responsible for a violation established is also unacceptable. In such exceptional cases the ECtHR may decide, on the basis of the reasons given by the respondent and the co-respondent, and having sought the views of the applicant, that only one of them is to be held responsible for that violation. According to the Court, the ECtHR cannot be empowered to rule on the allocation of responsibility between the EU and its Member States as such a decision would yet again mean the assessment of the rules of EU law governing the division of powers between the EU, risking an adverse effect to the distribution of powers in the EU system.

### 3.4. The procedure for the prior involvement of the Court of Justice

The Court, while noting the importance of such a procedure, held that in its current form, the procedure [Article 3 (6) of the draft agreement] does not ensure that, in any case pending before the ECtHR, the EU is fully and systematically informed. This should be guaranteed so that the competent EU institution is able to assess whether the Court of Justice has already given a ruling on the question at issue in that case and, if it has not, to arrange for the prior involvement procedure to be initiated. The Court also held it to be problematic that the abovementioned procedure only allows for the Court to rule on the validity of secondary EU law, and not on its interpretation. The Court stressed: if the Court were not allowed to provide the definitive interpretation of secondary law, and if the ECtHR, in considering whether that law is consistent with the ECHR, had itself to provide a particular interpretation from among the plausible options, there would most certainly be a breach of the principle that the Court of Justice has exclusive jurisdiction over the definitive interpretation of EU law.<sup>15</sup>

### 3.5. Judicial review in CFSP matters

The final point brought up by the Court concerned the question of judicial review regarding Common Foreign and Security Policy (CFSP) matters. The Court of Justice has very limited competence in CFSP matter, as it may only monitor compliance with Article 40 TEU, and review the legality of certain decisions as provided for by the second paragraph of Article 275 TFEU. This means that certain acts

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<sup>15</sup> Paras. 236-248.

adopted in the context of the CFSP fall outside the ambit of judicial review by the Court of Justice. The draft agreement, however, would empower the ECtHR to rule on the compatibility with the ECHR of certain acts, actions or omissions performed in the context of the CFSP, whereas the Court lacks such jurisdiction, entrusting judicial review to a non-EU institution. Yet according to the Court of Justice's case law, jurisdiction to carry out a judicial review of acts, actions or omissions of the EU cannot be conferred exclusively on an international court which is outside the institutional and judicial framework of the EU.

Having regard to all of the above, the Court of Justice concluded that the agreement on the accession of the EU to the ECHR is not compatible with Article 6 (2) TEU or with Protocol No. 8.

## 4. Remarks

The accession of the European Union to the European Convention on Human Rights would mean that, for the first time, the EU would be subject to external control as regards the protection of fundamental rights. Following some diverging and alternating steps on the road to possible accession by the EC/EU, the Treaty of Lisbon finally included an *expressis verbis* legal basis for EU accession to the ECHR. What's more, it made it an obligation.<sup>16</sup> The EU finally came close to fulfilling this obligation when the draft agreement was finalised in 2013. The current Opinion of the Court of Justice, however, means that accession will be considerably delayed.

### 4.1. The consequences of Opinion 2/13

Opinions given by the Court of Justice under Article 218 (11) TFEU are binding in nature, thus in case the opinion of the Court is negative, the envisaged agreement may not enter into force unless it is amended or the Treaties themselves are revised. To say that either of these options is difficult is probably an understatement.

During a possible renegotiation of the draft agreement would, the EU would have to insist that all objections raised by the Court of Justice are addressed. This 'checklist' of demands for almost a dozen amendments would, from the point of view of the EU, not be negotiable, and considering the fact that the previous version also took over three years to negotiate, amendments aimed at giving priority to EU law and the Court of Justice over certain elements of the Convention would probably not be well received by non-EU members of the Council of Europe.<sup>17</sup>

Amendments to EU primary law are, as (relatively) recent integration history has shown, also not necessarily easy and ratification of modifying treaties may be delayed or even rejected (it should be enough to refer here to the failed Constitutional Treaty and the not exactly smooth ratification of the Lisbon Treaty).

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<sup>16</sup> TEU Art. 6 (2) "The Union *shall* [emphasis added] accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms."

<sup>17</sup> Peers, Steve: *The CJEU and the EU's accession to the ECHR: a clear and present danger to human rights protection* in EU Law Analysis, <http://eulawanalysis.blogspot.hu/2014/12/the-cjeu-and-eus-accession-to-echr.html> (18 December 2014)

## 4.2. Critical remarks

The Opinion of the Court of Justice was much awaited, and when it finally arrived, it mostly caused disappointed reaction from academics. The procedure before the Court of Justice presented an interesting situation: the Commission (who initiated the procedure), the Parliament, the Council, and twenty-four Member States were all of the opinion that the draft agreement was compatible with EU primary law, and were all essentially aiming to ‘convince’ the Court of Justice of their point of view. The Advocate-General’s View, while noting certain issues, was in favour of conditional approval (reflecting a ‘pro-accession spirit’), the Court of Justice’s Opinion reflects a different, to some extent formalistic view – some call its attitude ‘uncooperative’.<sup>18</sup> The rejection also came as a somewhat of a surprise, because in the Court of Justice itself was involved, to an unprecedented extent, in the process of drafting the agreement, and the drafters committed to take into account the Joint Communication of the Presidents of the Luxembourg and Strasbourg courts.<sup>19</sup>

I agree with Steve Peers as regards his assessment that most of the Court of Justice’s conditions for accession are of a procedural nature, and are meant essentially to accomplish one thing: preserving the competence of the CJEU as the adjudicator of EU law as an autonomous legal order. The Court’s vigilance in protecting its own jurisdiction is hardly surprising in light of such judgments as *MOX Plant* or *Kadi*. The previous one has shown that the Court of Justice requires that any EU law matter between Member States be brought before it and that engaging a different international tribunal with such a case means no less than an infringement of Member State obligations under EU law.<sup>20</sup> In the latter case, the Court of Justice has taken a dualistic approach to the relationship between international law and EU law, and held emphasized *inter alia* that obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the Treaties. It may be seen as somewhat ironic that in the *Kadi* case, the Court of Justice was otherwise emphasizing the essential nature of fundamental rights protection.<sup>21</sup>

Among its other misgivings, the CJEU has emphasized the possibly problematic interplay between the Protocol No. 16 advisory opinion procedure by the ECtHR, and the CJEU’s preliminary ruling procedure. It is worth noting in this regard that Protocol No. 16 is not even in force yet, and that the Protocol No. 16 advisory opinion is different in nature, as it will be limited to the highest national court, it is never obligatory and the opinion itself is not binding.<sup>22</sup>

The CJEU’s insistence that it is unacceptable under EU law for the Member States to lay down higher protection standards than the Charter (as stated by it previously in the much debated *Melloni* judgment)<sup>23</sup> lead to the statement that Article 53 of the ECHR (which allows for higher protection by the contracting states) and Article 53 of the Charter to be incompatible. Whereas it is a legitimate aim to prevent the

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<sup>18</sup> *The EU’s Accession to the ECHR – A ‘NO’ from the ECJ*. Editorial Comments in *Common Market Law Review* Vol. 52 (2015), p. 1.

<sup>19</sup> Odermatt, Jed: *A giant step backwards? Opinion 2/13 on the EU’S accession to the European Convention on Human Rights* in *Leuven Centre for Global Governance Studies*, Working Paper No. 150, 2015, p. 8.

<sup>20</sup> C-459/03 *Commission v. Ireland* [2006] ECR I-04635.

<sup>21</sup> Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat v. Council* [2008] ECR I-0635.

<sup>22</sup> Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2013) <http://conventions.coe.int/Treaty/EN/Treaties/Html/214.htm> (10 March 2015).

<sup>23</sup> Case C-399/11 *Melloni* [2013] (Not yet reported.)



circumvention of the limit set by Article 53 of the Charter, the CJEU is in effect arguing against a higher level of fundamental rights protection.<sup>24</sup>

It is also questionable whether the CJEU's insistence that CFSP measures cannot be subject to review by the ECtHR is fully defensible. Operations in the framework of the CFSP may entail fundamental rights violations by Member States in extraterritorial situations; and as the case law of the ECtHR has shown, the ECHR can, under circumstances, have extraterritorial effect based on the interpretation of the concept of 'jurisdiction' (Art. 1 ECHR) by the Strasbourg court.<sup>25</sup> The international responsibility of international organizations for fundamental rights infringements is also an issue that may have relevance in this regard.<sup>26</sup> It seems that the CJEU is currently of the opinion that if it does not have jurisdiction over EU CFSP measures, then the ECtHR cannot either.<sup>27</sup> Some question whether the accession of the EU is necessary at all, also (but not exclusively) in light of the Opinion<sup>28</sup>, yet the accession would undoubtedly mean external judicial control of EU law for the very first time (as all EU fundamental rights norms including the Charter are, from the point of view of the EU, 'internal'); what's more, if the EU is to honour the obligation enshrined in Article 6 (3) TEU, then it cannot but accede to the ECHR. The TEU could, of course, also be modified (even though it really doesn't seem probable at this time). Leonard Besselink has proposed an innovative solution possibility that would be based on adding a 'notwithstanding protocol' to the Treaties<sup>29</sup>, although this would mean a quite hostile response to the Opinion of the Court of Justice.<sup>30</sup> I agree with Daniel Halberstam that, for all its problematic elements, Opinion 2/13 indeed contains real concerns about important constitutional principles, yet these concerns are sometimes somewhat misguided, and the responses required by the CJEU seem to show signs of mild overreaction.<sup>31</sup>

At the 2014 FIDE conference, the president of the European Court of Justice, Vassilios Skouris began his remarks by a determined statement: "The Court of Justice is not a human rights court; it is the Supreme Court of the European Union."<sup>32</sup> If nothing else, Opinion 2/13 definitely gave weight to that statement. Its contribution to an enhanced protection of fundamental rights in the EU, however, remains questionable.

<sup>24</sup> Lock, Tobias: *Oops! We did it again – the CJEU's Opinion on EU Accession to the ECHR* on Verfassungsblog <http://www.verfassungsblog.de/en/oops-das-gutachten-des-eugh-zum-emrk-beitritt-der-eu> (18 December 2014)

<sup>25</sup> The Court's case law regarding this issue is complex and not without questions, but the acceptance of extraterritorial jurisdiction under certain requirements is an unquestionable element, having regard cases such as, *inter alia*, *Loizidou v. Turkey* (App. no. 15318/89) ECtHR (1996), *Al-Skeini and Others v. The United Kingdom* (App. no. 55721/07) ECtHR (2011), and *Hassan v. United Kingdom* (App. no. 29750/09) ECtHR (2014).

<sup>26</sup> In the case law of the ECtHR, see among others *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (Application nos. 71412/01 and 78166/01) EctHR Grand Chamber (2007).

<sup>27</sup> Peers, *Ibid.* Peers also states that the CJEU's point of view demonstrated in this opinion means that bringing a CFSP dispute before the International Court of Justice would also be deemed by it to be a breach of EU law obligations.

<sup>28</sup> See in this regard for example Láncoš Petra Lea: *A Bíróság 2/13. számú véleménye az Unió EJEE-hez való csatlakozásáról* in Pázmány Law Working Papers 2015/1, p. 8. (Available at: <http://plwp.jak.ppke.hu/hu/>)

<sup>29</sup> Besselink, Leonard F. M.: *Acceding to the ECHR notwithstanding the Court of Justice Opinion 2/13* on Verfassungsblog, <http://www.verfassungsblog.de/en/acceding-echr-notwithstanding-court-justice-opinion-213> (23 December 2014)

<sup>30</sup> See also Odermatt, Jed 2015, p. 15.

<sup>31</sup> Halberstam, Daniel: *'It's the Autonomy, Stupid!' A Modest Defense of Opinion 2/13 on EU Accession to the ECHR, and a Way Forward* in Public Law and Legal Theory Research Paper Series, No. 439, February 2015, p. 38.

<sup>32</sup> Quoted by Besselink (*Ibid.*).