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8TH MEETING OF THE CDDH AD HOC NEGOTIATION GROUP ON THE ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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Discussion paper for agenda items 4 ("Basket 1") and 5 ("Basket 2" and Article 53 ECHR)

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Tuesday 2 February 2021 (10:00 am) – Thursday 4 February 2021 (4:30 pm)

(Due to the COVID-19 situation, the meeting will be held through the KUDO videoconferencing system)

Council of Europe

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Introduction:

1. At its 7th meeting (24-26 November 2020), the CDDH ad hoc negotiation Group ("47+1 Group") on the accession of the European Union (EU) to the European Convention on Human Rights (ECHR) discussed a number of proposals. These related in particular to the following issues:

- The EU's specific mechanisms of the procedure before the European Court of Human Rights ("Basket 1");
- Discussion of proposals submitted on the operation of inter-party applications (Article 33 ECHR) and of references for an advisory opinion (Protocol No. 16) in relation to EU member states ("Basket 2"); and
- Proposals submitted in respect of Article 53 ECHR.

2. The Chair concluded that a number of these proposals could be refined in light of the discussions at the 7th meeting. As a next step for the forthcoming meeting, the Secretariat was invited to provide input in form of amended proposals or "building blocks" for further discussion. The following document responds to this invitation.

3. The present paper presents proposals or "building blocks", as considered appropriate, with regard to the above issues (with the exceptions for Article 3, paragraph 6 of the draft accession Agreement, the proposals for which were considered at the last meeting and are currently pending the outcome of other proposals in "Basket 1"). The proposed changes to the draft accession instruments are highlighted in bold.

4. Each proposal comes with explanations in a box underneath the wording of the proposal. In these "explanation boxes", the Secretariat has sought to identify parameters which result from the input by delegations during previous meetings. These parameters have served as "building blocks" for the proposals which attempt to reconcile the different positions. Due regard has been given to the general principles for the accession negotiations, as laid out in paragraph 7 of the explanatory report to the draft Accession Agreement, as well as the declaration by the Council of Europe member states which are not members of the EU (see Appendix III to the 6th meeting report (CDDH47+1(2020)R6)).

5. At certain occasions, the paper leaves open where a certain proposal should be placed in the draft accession instruments, thereby inviting delegates to first agree upon the content of the proposal and only subsequently discuss its placement. Other proposals have been made for inclusion in the draft Accession Agreement, but the Secretariat has indicated in the respective "explanation box" that, if delegates agree in principle on the content of the proposal, the "47+1 Group" could also consider whether the proposal could be placed elsewhere in the accession instruments while maintaining sufficient legal certainty to solve the underlying issue.

6. Proposals to the draft Accession Agreement could be complemented at a later stage with corresponding paragraphs in the explanatory report, if considered appropriate by the "47+1 Group". Some of the paragraphs in the "explanation boxes" may serve as inspiration for such corresponding paragraphs in the explanatory report.

A. Proposals for "Basket 1" ("The EU's specific mechanisms of the procedure before the European Court of Human Rights")

Article 2 – Reservations to the Convention and its protocols

1. The European Union may, when signing or expressing its consent to be bound by the provisions of this Agreement in accordance with Article 10, make reservations to the Convention and to the Protocol in accordance with Article 57 of the Convention.

2. Article 57, paragraph 1, of the Convention shall be amended to read as follows:

> "1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. The European Union may, when acceding to this Convention, make a reservation in respect of any particular provision of the Convention to the extent that any law of the European Union then in force is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article."

3. (new) Reservations made by High Contracting Parties under Article 57 of the Convention shall retain their effects in respect of any such High Contracting Party which is a co-respondent to the proceedings.

Explanations of the proposal:

The proposal seeks to meet the requirement of Article 2 of Protocol No. 8 to the Lisbon Treaty, according to which the Accession Agreement should ensure that nothing therein affects the situation of member states in relation to the ECHR, in particular in relation to reservations (Article 57 ECHR) thereto. It also seeks to address the concern by Opinion 2/13 of the Court of Justice of the European Union (paragraphs 226-228) that the Accession Agreement does not preclude a member state from being held responsible, together with the EU, for the violation of a provision of the Convention in respect of which that member state may have made a reservation in accordance with Article 57 ECHR.

As the co-respondent mechanism is a newly introduced feature to the Convention system, it would be legitimate to explicitly clarify in the draft Accession Agreement that the situation of member states in relation to reservations made under Article 57 ECHR remains unaffected under this mechanism. This would also be in line with the general principles of the accession negotiations (as mentioned in paragraph 7 of the explanatory report of the draft Accession Agreement).

The present proposal differs from a previous proposal considered by the "47+1 Group" in respect of two aspects. First, the proposal has been "moved" from Article 3, paragraph 7 to Article 2, which is the provision of the draft Accession Agreement which deals explicitly with reservations to the Convention. Secondly, it includes a direct reference to Article 57 ECHR. Both aspects were included following suggestions made by the "47+1 Group" at its last meeting (see paragraph 9 of the meeting report for the 7th negotiation meeting (CDDH47+1(2020)R7).

The proposal does not require an amendment to the Convention itself.

Article 3 – Co-respondent mechanism

1. Article 36 of the Convention shall be amended as follows:

a. the heading of Article 36 of the Convention shall be amended to read as follows: "Third party intervention and co-respondent";

b. a new paragraph 4 shall be added at the end of Article 36 of the Convention, which shall read as follows:

"4. The European Union or a member State of the European Union may become a co-respondent to proceedings by decision of the Court in the circumstances set out in the Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms. A co-respondent is a party to the case. The admissibility of an application shall be assessed without regard to the participation of a co-respondent in the proceedings."

2. Where an application is directed against one or more member States of the European Union, the European Union may become a co-respondent to the proceedings in respect of an alleged violation notified by the Court if it appears that such allegation calls into question the compatibility with the rights at issue defined in the Convention or in the protocols to which the European Union has acceded of a provision of European Union law, including decisions taken under the Treaty on European Union and under the Treaty on the Functioning of the European Union, notably where that violation could have been avoided only by disregarding an obligation under European Union law.

3. Where an application is directed against the European Union, the European Union member States may become co-respondents to the proceedings in respect of an alleged violation notified by the Court if it appears that such allegation calls into question the compatibility with the rights at issue defined in the Convention or in the protocols to which the European Union has acceded of a provision of the Treaty on European Union, the Treaty on the Functioning of the European Union or any other provision having the same legal value pursuant to those instruments, notably where that violation could have been avoided only by disregarding an obligation under those instruments.

4. Where an application is directed against and notified to both the European Union and one or more of its member States, the status of any respondent may be changed to that of a co-respondent if the conditions in paragraph 2 or paragraph 3 of this article are met.

4a. (new) The Court shall make available to the European Union information concerning all cases notified to its member States and make available to the latter information concerning all cases notified to the European Union.

Explanations of the proposal:

According to Article 1, letter b. of Protocol No. 8 to the Lisbon Treaty, the draft accession Agreement "*shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to … the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate*." In Opinion 2/13, the Court of Justice of the European Union considered that this should include a mechanism according to which the EU is systematically and fully informed of potential cases for which the co-respondent mechanism could apply (paragraph 241 of Opinion 2/13). The present proposal addresses this issue by taking into consideration several parameters.

Firstly, the proposal is mindful of the necessity to avoid any undue increase of the already heavy workload of the European Court of Human Rights. The Registry of the European Court of Human Rights operates with automatised procedures in processing its applications, which would make it possible to add a systematic information feature (e.g. a specific letter template) for relevant communicated cases to the EU (or its member states, as the case may be). This would enable the EU (or its member states, as the case may be) to be immediately notified of a communicated case and have access to the relevant information on the European Court of Human Rights' website (i.e. the HUDOC database). Such practice has already today been put in place by the Court's Registry with High Contracting Parties which could potentially be third party interveners under Article 36 ECHR, and thus would not constitute a preferential treatment for any particular High Contracting Party.

Secondly, the proposal would also enable the EU (or its member states, as the case may be) to request additional information in specific cases if this is necessary to determine whether the conditions for the co-respondent mechanism (Article 3, paragraphs 2 or 3 of the draft Accession Agreement) are met. Given that very few cases amongst the communicated cases will qualify for the co-respondent mechanism, such instances can be presumed to occur very rarely.

Thirdly, the proposal takes at the same time into account that, until the ultimate decision to apply the co-respondent mechanism is made, the EU or its member states - as the case may be - are not parties to a given case and thus cannot yet be treated as such by an international court (e.g. concerning systematic access to the entire application files of all communicated cases to EU member states).

If the "47+1 Group" agrees in principle with this proposal, it could also discuss whether the proposal could be placed elsewhere in the accession instruments, if considered appropriate.

~~5. A High Contracting Party shall become a co-respondent either by accepting an invitation from the Court or by decision of the Court upon the request of that High Contracting Party. When inviting a High Contracting Party to become co-respondent, and when deciding upon a request to that effect, the Court shall seek the views of all parties to the proceedings. When deciding upon such a request, the Court shall assess whether, in the light of the reasons given by the High Contracting Party concerned, it is plausible that the conditions in paragraph 2 or paragraph 3 of this article are met.~~

5. (new) A High Contracting Party shall become a co-respondent, either by accepting an invitation from the Court or by decision of the Court upon the request of that High Contracting Party, if the conditions in paragraphs 2 or 3 of this article are met on account of an assessment by the European Union of the applicable European Union law. The European Union shall submit a reasoned declaration to the Court and all parties to the proceedings which indicates that the conditions under paragraphs 2 or 3 of this article are met. Before a High Contracting Party becomes co-respondent, the Court shall ensure that the views of all parties to the proceedings have been heard.

Explanations of the proposal:

This proposal contains a new paragraph 5 which would replace the previous paragraph 5 of Article 3. On the basis of the discussions at previous meetings, several parameters could be identified as

being of concern for different delegations and which were considered as "building blocks" for this proposal. These parameters are as follows:

1. The need to preserve the autonomy of EU law;
2. The need for the European Court of Human Rights to remain the "master of its own proceedings";
3. The fact that the European Court of Human Rights has no interest in making itself an assessment of the internal distribution of powers of the EU and its member states;
4. The already-existing case-law of the European Court of Human Rights, according to which it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, if necessary in conformity with EU law[1];
5. The proposal that the EU provides a reasoned declaration which lays out its interpretation of the applicable EU law in a transparent manner[2];
6. The need that the views of the parties, including the applicant, are taken into account; and
7. The need to respect the general principles for the accession negotiations.

The present proposal has attempted to find a compromise which would reconcile these different parameters and which can be described as follows:

This proposal intends to meet the concerns of Opinion 2/13 by providing the EU with the opportunity to assess the applicable EU law, thereby avoiding that the European Court of Human Rights is required to (even incidentally) pronounce itself on the division of powers between the EU and its member states. The interpretation of the applicable EU law would be considered final and authoritative for the purpose of this provision.

As the "master of its own proceedings", the European Court of Human Rights will take a formal decision to join a co-respondent to the proceedings. This is because the decision is not limited to mere questions of EU law (which according to this proposal will be determined by the EU), but may relate also to other specific conditions which fall exclusively into the competence of the European Court of Human Rights. An example could be that the European Court of Human Rights considers that the procedural stage to add a co-respondent is premature, because it has asked upon communication of an application to the respondent Party questions about its admissibility (such as the exhaustion of domestic remedies) which should be clarified first.

In both alternatives (invitation/request), the views of all parties (including the applicant) need to be sought through the Registry of the European Court of Human Rights before the co-respondent mechanism can be applied.

If the EU considers that the criteria of paragraphs 2 or 3 are met, it shall submit a reasoned declaration to the European Court of Human Rights in which it indicates which of the conditions are met and provide the reasons for the fulfilment of the criteria. There would however be no test of plausibility applied by the European Court of Human Rights. Such declaration must be made, irrespective of which alternative (invitation/request) applies. The explanatory report to the draft Accession Agreement could clarify that the European Court of Human Rights should set the EU a specific deadline upon issuing an invitation to become co-respondent, and that a reasoned declaration should also be made when the EU declines such an invitation.

[1] See, for example, the judgments of *Jeunesse v. the Netherlands* (GC), no. 12738/10, judgment of 3 October 2014, paragraphs 110-112; and *Anheuser-Busch Inc. v. Portugal* (GC), no. 73049/01, judgment of 11 January 2007, paragraph 86).

[2] The idea of a reasoned declaration was suggested at the last meeting, see paragraph 6 of the meeting report (CDDH47+1(2020)R7). The present proposal has therefore included this parameter.

The reasoned declaration should duly respond to the views of the parties to the case, including the applicant, on the need for a co-respondent to participate in the proceedings, where such views have been expressed. It should also explain to the applicant that the application of the co-respondent mechanism in the case at hand is necessary for the proper administration of justice, notably that it will enable the applicant to obtain a full execution of a future judgment (in case the European Court of Human Rights finds a violation of the Convention) which requires the participation of the co-respondent.

Finally, the proposal would entail that the conditions for applying the co-respondent mechanism in Article 3, paragraphs 2 and 3 of the draft Accession Agreement could be maintained in their current place and form.

5a. (new) The participation of the co-respondent shall, at any stage of the proceedings, be terminated if the conditions in paragraphs 2 or 3 of this article are no longer met on account of an assessment as indicated in paragraph 5.

Explanations of the proposal:

This proposal intends to include in the draft Accession Agreement the possibility to terminate the co-respondent mechanism in a manner which corresponds to its application, as proposed in the new paragraph 5 of this provision. The proposal seeks to find a compromise between two parameters.

Firstly, the termination of the co-respondent mechanism would be necessary if, in the course of the proceedings, the situation has changed to the effect that the conditions for applying the co-respondent mechanism in the first place are no longer met. This could, for example, be the case where the co-respondent mechanism had been applied, but in the meantime - e.g. through a clarifying decision by the Court of Justice of the European Union in the course of the *prior involvement*-procedure - it has become apparent that the necessary remedy would have to come solely from the respondent EU member state. In that case, there would no longer be a legitimate reason to insist on maintaining the co-respondent mechanism, as the proper administration of justice would not require that a High Contracting Party is maintained as co-respondent if it is neither responsible for a violation nor capable of remedying it. As with the application of the co-respondent mechanism, the assessment by the EU of the interpretation of the applicable EU law would be considered final and authoritative for the purposes of this provision.

Secondly, the termination of the co-respondent mechanism would be executed by the European Court of Human Rights on the basis of a reasoned declaration by the EU, thereby avoiding the appearance that the EU could terminate its status as co-respondent unilaterally and for any other reasons then the fact that the conditions for applying the mechanism no longer apply.

The termination of the co-respondent mechanism should not be confused with the (non-existing) possibility to terminate a case as respondent, which for obvious reasons is not possible for any High Contracting Party.

If the “47+1 Group” agrees in principle on this proposal, it could also discuss whether the proposal could be placed elsewhere in the accession instruments, if considered appropriate.

6. In proceedings to which the European Union is a co-respondent, if the Court of Justice of the European Union has not yet assessed the compatibility with the rights at issue defined in the Convention or in the protocols to which the European Union has acceded of the provision of European Union law as under paragraph 2 of this article, sufficient time shall be afforded for the Court of Justice of the European Union to make such an assessment, and thereafter for the parties to make observations to the Court. The European Union shall ensure that such assessment is made quickly so that the proceedings before the Court are not unduly delayed. The provisions of this paragraph shall not affect the powers of the Court.[3]

7. If the violation in respect of which a High Contracting Party is a co-respondent to the proceedings is established, the respondent and the co-respondent shall be jointly responsible for that violation~~, unless the Court, on the basis of the reasons given by the respondent and the co-respondent, and having sought the views of the applicant, decides that only one of them be held responsible~~.

Explanations of the proposal:

It should be noted that the deletion of the last half-sentence in Article 3, paragraph 7 of the draft Accession Agreement is not a new proposal. This deletion (i.e. of the possibility for an exception from the general principle of joint responsibility) was already considered at the previous meeting of the "47+1 Group" and is still pending. The "47+1 Group" may wish to consider whether one single form of joint responsibility (without exceptions) for co-respondent cases could facilitate the streamlining of the draft Accession Agreement and secure that applicants can easily receive any compensation that has been awarded, while at the same time meeting the concern raised in Opinion 2/13 by the Court of Justice of the European Union (paragraphs 229-234). For more information on this issue, please refer to the "Chair's paper to structure the discussion at the 6th meeting" (CDDH47+1(2020)2, paragraphs 38-43).

8. This article shall apply to applications submitted from the date of entry into force of this Agreement.

B. Proposals for "Basket 2" ("Discussion of proposals submitted on the operation of inter-party applications (Article 33 ECHR) and of references for an advisory opinion (Protocol No. 16) in relation to EU member states")

Note by the Secretariat: In accordance with a suggestion at the last meeting (see paragraph 14 of the 7th meeting report, CDDH47+1(2020)R7), the proposals/"building blocks" relating to Article 33 ECHR and Protocol No. 16 to the ECHR have been separated and are consequently being presented separately.

Article 5a (new) – Requests for advisory opinions under Protocol No. 16 of the Convention

A new paragraph 4 of Article 1 should be added to Protocol No. 16 to read as follows:

[3] Note by the Secretariat: no new proposals are submitted for this paragraph, with previous proposals pending the outcome of the negotiations of other paragraphs of this provision (see paragraph 11 of the meeting report for the 7th negotiation meeting (CDDH47+1(2020)R7).

"In the event of a request for an advisory opinion under this Protocol by a court or tribunal of a member State of the European Union which has acceded to this Protocol, the opportunity shall be afforded to the European Union to make a determination of whether and, if so, to what extent this amounts to a circumvention of the procedure in Article 267 of the Treaty on the Functioning of the European Union. Should this be established, the Court shall use its discretion under Article 2, paragraph 1 of this Protocol to reject the request as far as the latter breaches European Union law."

Explanations of the proposal:

This proposal provides the EU with the possibility to finalise an internal assessment (i.e. infringement proceedings) to swiftly respond to the making of a request for an advisory opinion under Protocol No. 16 to the Convention in possible violation of Article 267 Treaty on the Functioning of the European Union.

The interpretation of the EU treaties provided by the EU would be considered final and authoritative for the purposes of this provision.

The explanatory report could refer to the possible timeframe in which such a determination should be possible, in order to minimise any additional time such a determination would require.

In light of the fact that a request for an advisory opinion may have several elements, some which may fall within and other which may fall outside the scope of Article 267 of the Treaty on the Functioning of the European Union, the European Court of Human Rights as the "master of its proceedings" will retain the final decision on the matter. It can exercise its discretion to reject the request fully, or in part (e.g. if only some elements violate EU law).

Moreover, the explanatory report to the draft Accession Agreement could clarify that this provision would equally apply to any possible successor provision of Article 267 of the Treaty on the Functioning of the European Union, e.g. after a revision of that treaty and the consequent renumbering of its provisions.

Article 4 – Inter-Party cases

Explanations provided by the Secretariat:

Article 3 of Protocol No. 8 to the Lisbon Treaty states that "Nothing in the [Accession Agreement] shall affect Article 344 of the Treaty on the Functioning of the European Union". The latter provision states that "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 Opinion 2/13 (paragraphs 201-214), the Court of Justice of the European Union had expressed concern that the draft Accession Agreement did not make provision for preventing inter-party cases brought by EU member states in violation of Article 344 of the Treaty on the Functioning of the European Union (TFEU).

The Secretariat considers that at this stage the submission of another concrete proposal should first be preceded by a clarification within the "47+1 Group" of the exact scope of Article 344 TFEU and,

in particular, the meaning of the term “concerning the interpretation or application of the Treaties”.

As a useful intermediate step, the “47+1 Group” may wish to identify a number of “building blocks” for a possible solution. On the basis of views expressed by delegations at previous meetings, the Secretariat identified the following parameters which could facilitate this:

1. The need that the Accession Agreement does not affect negatively Article 344 TFEU, as required by Article 3 of Protocol No. 8 to the Lisbon Treaty;

2. The need to respect the general principles for the accession negotiations;

3. The need to respect the integrity of the European Court of Human Rights;

4. The general perception that inter-party cases brought in violation of EU law are undesirable and should be avoided in principle;

5. The opportunity for the European Union to establish whether an inter-party case relates in scope to EU law, and the lack of interest by the European Court of Human Rights to undertake this exercise itself;

6. The possibility for the European Court of Human Rights (as the “master of its proceedings”) to rule, possibly following an assessment by the European Union of its applicable law relating to Article 344 TFEU, which of several issues in a given application should be entertained (so-called “mixed applications”);

7. The fact that High Contracting Parties have the possibility from collectively “waiving” their right to bring certain inter-party cases before the European Court of Human Rights in order to comply with other obligations under international and European law, without negatively affecting the situation of those High Contracting Parties that choose not to waive such possibility.

Any solution should only encompass inter-party applications amongst EU member states as well as between the EU and its member states. Inter-party applications under Article 33 ECHR brought by High Contracting Parties which are not members of the EU should not be affected irrespective of whether they are brought against the EU or any of its member states.

On the basis of the outcome of the discussion of the scope of Article 344 TFEU, the Group could consider whether the following formulation could facilitate the further discussion:

“To the extent that disputes concern the interpretation or application of the European Union treaties within the meaning of Article 344 of the Treaty on the Functioning of the European Union, they shall not be understood as constituting allegations of a breach of the provisions of the Convention and the Protocols thereto within the meaning of Article 33 of the Convention.”

This could be accompanied by a second aspect which would provide the opportunity to the European Union for making a determination of whether and, if so, to what extent an inter-party application is in breach of Article 344 TFEU. In this context, it can be assumed that the European Court of Human Rights would have no interest in prematurely finalising the treatment of an inter-party application before such determination would be completed, not least because it is clear that a judgment by the European Court of Human Rights delivered on the basis of an application which would subsequently turn out to be in breach of EU law is likely to give rise to great difficulties for its execution, as the

latter would necessarily involve EU law. At the same time, the manner in which the European Court of Human Rights should deal with "mixed applications" could be indicated.

C. Proposal on Article 53 of the Convention (exact placement in the accession instruments to be determined at a later stage)

Interpretation of Article 53 of the Convention

In so far as the High Contracting Parties may limit any of the human rights or fundamental freedoms in their laws in order to fulfil their commitments to international or European cooperation, Article 53 ECHR is to be understood as not requiring more extensive protection than the level of protection granted by the Convention, as interpreted by the European Court of Human Rights.

Explanations of the proposal:

The proposal seeks to meet the concern expressed in Opinion 2/13 by the Court of Justice of the European Union (paragraphs 186-189) that Article 53 ECHR[4] should be coordinated with Article 53 of the EU Charter of Fundamental Rights[5].

Since Article 53 ECHR only opens up the possibility to raise the Convention level while not requiring such a move, there is nothing in the provision to prevent High Contracting Parties from agreeing on applying collectively a specific protection level among themselves, as long as the minimum protection level determined by the European Court of Human Rights is respected. This minimum protection level is in any event binding for the EU through the provision of Article 52, paragraph 3 of the EU Charter of Fundamental Rights [6].

The exact placement in the draft accession instruments of the proposal, which is of a mere clarificatory nature, would remain to be determined. Delegations are at this stage primarily invited to discuss whether agreement can be reached about the substance of the proposal.

[4] Article 53 ECHR ("Safeguard for existing human rights") states that: *"Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any agreement to which it is a party."*

[5] Article 53 of the EU Charter of Fundamental Rights ("Level of protection") states that: *"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."*

[6] Article 52, paragraph 3 of the EU Charter of Fundamental Rights states that: "*In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection*."