



SUNICOP

HUMAN RIGHTS PROTECTION AT INTERNATIONAL, SUPRANATIONAL AND NATIONAL LEVEL



SUNICOP

Joining the ECHR

- The importance of the ECHR
- The antecedents of the accession
 - Strasbourg and Luxembourg
 - Development of primary legal foundations
 - Preparation of the CoE
- The legal basis of the accession
 - The accession process
 - Position of the ECJ and ECtHR
- The effect on the EU competences

The importance of the ECHR

- CoE = intergovernmental organization, aims stronger unity by the protection of HR



The importance of the ECHR

Protection mechanism

- EHRC and ECtHR – from 1998 only ECtHR
- 1 judge / state
- Possible applicants:
 - Individuals
 - States
- Life of an application before the ECtHR:

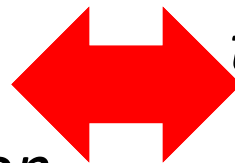
file:///localhost/Users/juditzeller/Documents/SUNICOP/ENG_SCHEMA.pdf

The antecedents of the accession – ECtHR and ECJ

From Luxembourg to Strasbourg

Convergence

- Carpenter: ECJ interpreted EC law expressly in the context of Article 8 ECHR
- Conolly: ECJ defined the scope of EC level protection of the freedom of expression with reference to Article 10 of the ECHR and the case-law of the ECtHR



Divergence

- Pupino: national court shall apply or adopt EU law within the frames of the ECHR
- Orkem: “right to silence” is no element of guarantee of Article 6

The antecedents of the accession – ECtHR and ECJ

From Strasbourg to Luxembourg

- Goodwin: ECtHR ensured a greater degree of protection of marriage than Article 12 ECHR with express reference to Article 9 of the Charter
- Pellegrin: ECtHR interpreted the right to a fair process citing the case-law of the ECJ

The antecedents of the accession – ECtHR and ECJ

From Strasbourg to Luxembourg

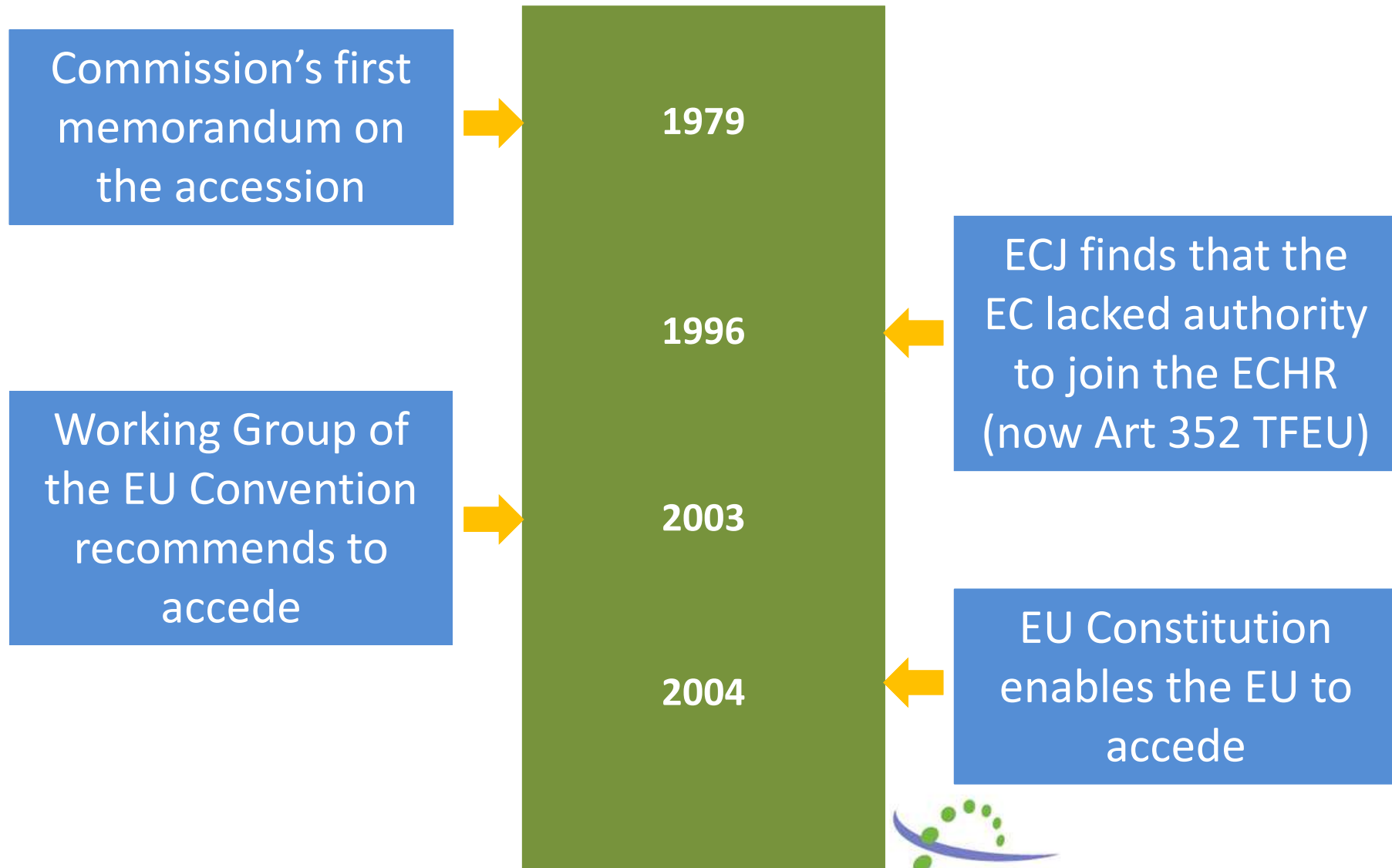
To what extent can HR jurisdiction of the ECtHR be recognized over EU legislation prior to accession to the ECHR?

-Matthews, Cantoni: *ECtH has been ready to scrutinize EU law*

-Bosphorus: *ECtHR affirmed the scrutiny of EU law from the point of view of HR – only insofar as there were deficiencies in the EU's own provisions relating to HR*

protection (≈ Solange)

The antecedents of the accession – Primary law



The antecedents of the accession – preparation of the CoE

- CDDH accession study – levels of provisions to be amended

a) text of provisions already contained in the ECHR + Protocols

b) supplementary provisions, the interpretation or content of which would change (e.g. national or citizen)

c) technical and administrative changes not pertaining to the text of the ECHR

The antecedents of the accession – preparation of the CoE

- Major problems:
 - Art. 59 enabled only states to ratify the ECHR
 - EC/EU participation in the Committee of Ministers
 - Base of the EU intervention in proceedings taken against MS(s) + EU as co-defendant in the proceedings of the ECtHR (- Art. 7 TEU?)
 - Strasbourg judge representing the EC/EU



The antecedents of the accession – preparation of the CoE

Adoption of the Protocol No 14 ECHR: “Opening clause” – Art. 59 (2) ECHR

Need to:

- further modifications
- authorization of the EU to accede

The legal basis of the accession

- Precondition: EU being a legal person of int'l law – Art. 47 TEU
- Art. 6 (2) TEU enables the EU to accede – without becoming a member of the CoE
- Conditions specified in Protocol No. 8 of the Lisbon Treaty
 - Accession shall not affect the competences of the EU or the powers of its institutions
 - Nothing should affect the situation of MSs in relation to the ECHR

The accession process

- Accession talks begin on 7th July 2010

European
Commission



CDDH-UE

- Accession treaty will be signed by the 47 Contracting States of the ECHR and EU and ratified by the member states of the CoE (Art. 59 (1) ECHR)
- Accession requires a unanimous decision of the Council and the consent of the Parliament – it shall enter into force after approval of the MS (Art. 218 (8) 2 TFEU)



Hungary-Croatia
IPA Cross-border Co-operation Programme

SUNICOP

Position of the ECJ and ECtHR

- Individuals can challenge acts of the EU by challenging national law applying or implementing EU law
- This must be seen in the context of the principle of subsidiarity



- It is primarily for the national authorities/courts to prevent, examine and penalise breaches of the ECHR
- Only ECJ is authorized to declare an act of the EU invalid
- EU acts shall be brought before the ECJ before the ECtHR rules on their compatibility with the ECHR

The effect on the EU competences

- Neither the Charter, nor the ECHR shall extend the competences of the EU



- EU legislation relating to FR shall continue to be made based on legal grounds of the TEU or TFEU



SUNICOP

**THANK YOU FOR YOUR
ATTENTION!**



SUNICOP