

Opinion 2/94 of the Court of Justice (28 March 1996)

Caption: Excerpt concerning the admissibility of the request for an Opinion. The Council consults the Court on compatibility with the EC Treaty of the Community's accession to an international agreement (the Convention for the Protection of Human Rights and Fundamental Freedoms). The Court concludes that it may, in this particular case, give its opinion on Community competence to proceed to accession, but that it may not, in the absence of detailed information about the content of the agreement, give an opinion on the compatibility of accession with the Treaty provisions.

Source: Reports of Cases before the Court of Justice and the Court of First Instance. 1996. [s.l.].

Copyright: All rights of reproduction, public communication, adaptation, distribution or dissemination via Internet, internal network or any other means are strictly reserved in all countries.

The documents available on this Web site are the exclusive property of their authors or right holders.

Requests for authorisation are to be addressed to the authors or right holders concerned.

Further information may be obtained by referring to the legal notice and the terms and conditions of use regarding this site.

URL: http://www.cvce.eu/obj/opinion_2_94_of_the_court_of_justice_28_march_1996-en-db253212-9e45-4545-8179-f6d51dd059c0.html

Publication date: 22/10/2012

Opinion of the Court of 28 March 1996

Accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms

Opinion 2/94

Opinion pursuant to Article 228(6) of the EC Treaty

Summary of the Opinion

*1. International agreements - Conclusion - Prior opinion of the Court - Purpose
(EC Treaty, Art. 228(6))*

*2. International agreements - Community agreements - Prior opinion of the Court - Request for an Opinion - Absence of detailed information about the content of the envisaged agreement - Court able to rule on Community competence to accede to the European Convention on Human Rights but not on compatibility of that accession with the rules of the Treaty - Admissibility of the request depending on its purpose
(EC Treaty, Art. 228(6))*

[...]

1. The exceptional procedure laid down in Article 228(6) of the Treaty, under which the Opinion of the Court of Justice on the compatibility of an envisaged agreement with the provisions of the Treaty may be obtained, is a special procedure of collaboration between the Court of Justice on the one hand and the other Community institutions and the Member States on the other whereby, at a stage prior to conclusion of an agreement which is capable of giving rise to a dispute concerning the legality of a Community act which concludes, implements or applies it, the Court is called upon to ensure, in accordance with Article 164 of the Treaty, that in the interpretation and application of the Treaty the law is observed. Its purpose is to avoid complications which may arise, not only in a Community context but also in that of international relations, from a possible decision of the Court to the effect that an international agreement binding the Community is, by reason either of its content or of the procedure adopted for its conclusion, incompatible with the provisions of the Treaty.

2. In order to assess the extent to which a lack of firm information about the terms of an envisaged agreement affects the admissibility of a request for an Opinion addressed to the Court of Justice pursuant to Article 228(6) of the Treaty, the purposes of the request must be distinguished.

Where a question of Community competence to conclude an agreement has to be decided, it is in the interests of the Community institutions and of the States concerned, including non-member countries, to have that question clarified from the outset of negotiations and even before the main points of the agreement are negotiated, the only condition being that the purpose of envisaged agreements should be known before negotiations are commenced.

However, where it is a matter of ruling on the compatibility of provisions of an envisaged agreement with the rules of the Treaty, it is necessary for the Court to have sufficient information about the actual terms of the agreement.

Therefore, faced with the question whether accession by the Community to the European Convention on the Protection of Human Rights and Fundamental Freedoms would be compatible with the Treaty, the Court may, even though it has still not been decided to open negotiations, give an Opinion on the Community's competence to accede to that Convention because the general purpose and subject-matter of the Convention and the institutional significance of such accession for the Community are perfectly well known, but, where it has insufficient information regarding the arrangements for accession and in particular as to the solutions envisaged to give effect in practice to submission by the Community to the present and future judicial control machinery established by the Convention, it cannot give an Opinion on the compatibility of accession to that Convention with the rules of the Treaty.

[...]

OPINION 2/94 OF THE COURT

28 March 1996

(Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms)

The Court of Justice has received a request for an Opinion, lodged at the Registry of the Court on 26 April

1994, from the Council of the European Union pursuant to Article 228(6) of the EC Treaty, which provides:

‘The Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article N of the Treaty on European Union.’

[...]

Opinion of the Court

Admissibility of the request for an Opinion

1 Ireland and the United Kingdom, as well as the Danish and Swedish Governments, submit that the request for an Opinion is inadmissible or is, at any rate, premature. They argue that there is no agreement framed in sufficiently precise terms to enable the Court to examine the compatibility of accession with the Treaty. In the opinion of those Governments an agreement cannot be said to be envisaged at a stage where the Council has as yet not even adopted a decision in principle to open negotiations on the agreement.

2 Article 228(6) of the Treaty provides that the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Treaty.

3 As the Court has stated, most recently in paragraph 16 of Opinion 3/94 of 13 December 1995 (not yet published in the ECR), the purpose of that provision is to forestall complications which would result from legal disputes concerning the compatibility with the Treaty of international agreements binding upon the Community.

4 The Court also stated in that Opinion (at paragraph 17) that a possible decision of the Court to the effect that such an agreement is, by reason either of its content or of the procedure adopted for its conclusion, incompatible with the provisions of the Treaty could not fail to provoke, not only in a Community context but also in that of international relations, serious difficulties and might give rise to adverse consequences for all interested parties, including third countries.

5 In order to avoid such complications, the Treaty has established the special procedure of a prior reference to the Court of Justice for the purpose of ascertaining, before the conclusion of the agreement, whether the latter is compatible with the Treaty.

6 That procedure is a special procedure of collaboration between the Court of Justice on the one hand and the other Community institutions and the Member States on the other whereby, at a stage prior to conclusion of an agreement which is capable of giving rise to a dispute concerning the legality of a Community act which concludes, implements or applies it, the Court is called upon to ensure, in accordance with Article 164 of the Treaty, that in the interpretation and application of the Treaty the law is observed.

7 As regards the existence of a draft agreement, there can be no doubt that, in this particular case, no negotiations had been commenced nor had the precise terms of the agreement for accession of the Community to the Convention been determined when the request for an Opinion was lodged. Nor will they be so when the Opinion is delivered.

8 In order to assess the extent to which the lack of firm information regarding the terms of the agreement affects the admissibility of the request, the purposes of the request must be distinguished.

9 As is clear from the observations submitted by the Governments of the Member States and by the Community institutions, accession by the Community to the Convention presents two main problems: (i) the

competence of the Community to conclude such an agreement and (ii) its compatibility with the provisions of the Treaty, in particular those relating to the jurisdiction of the Court.

10 As regards the question of competence, in paragraph 35 of Opinion 1/78 of 4 October 1979 ([1979] ECR 2871) the Court held that, where a question of competence has to be decided, it is in the interests of the Community institutions and of the States concerned, including non-member countries, to have that question clarified from the outset of negotiations and even before the main points of the agreement are negotiated.

11 The only condition which the Court referred to in that Opinion is that the purpose of the envisaged agreement be known before negotiations are commenced.

12 There can be no doubt that, as far as this request for an Opinion is concerned, the purpose of the envisaged agreement is known. Irrespective of the mechanism by which the Community might accede to the Convention, the general purpose and subject-matter of the Convention and the institutional significance of such accession for the Community are perfectly well known.

13 The admissibility of the request for an Opinion cannot be challenged on the ground that the Council has not yet adopted a decision to open negotiations and that no agreement is therefore envisaged within the meaning of Article 228(6) of the Treaty.

14 While it is true that no such decision has yet been taken, accession by the Community to the Convention has been the subject of various Commission studies and proposals and was on the Council's agenda at the time when the request for an Opinion was lodged. The fact that the Council has set the Article 228(6) procedure in motion presupposes that it envisaged the possibility of negotiating and concluding such an agreement. The request for an Opinion thus appears to be prompted by the Council's legitimate concern to know the exact extent of its powers before taking any decision on the opening of negotiations.

15 Furthermore, in so far as the request for an Opinion concerns the question of Community competence, its import is sufficiently clear and a formal Council decision to open negotiations was not indispensable in order further to define its purpose.

16 Finally, if the Article 228(6) procedure is to be effective it must be possible for the question of competence to be referred to the Court not only as soon as negotiations are commenced (Opinion 1/78, paragraph 35) but also before negotiations have formally begun.

17 In those circumstances, the question of Community competence to proceed to accession having been raised as a preliminary issue within the Council, it is in the interests of the Community, the Member States and other States party to the Convention to have that question settled before negotiations begin.

18 It follows that the request for an Opinion is admissible in so far as it concerns the competence of the Community to conclude an agreement of the kind envisaged.

19 However, the same is not true as regards the question of the compatibility of the agreement with the Treaty.

20 In order fully to answer the question whether accession by the Community to the Convention would be compatible with the rules of the Treaty, in particular with Articles 164 and 219 relating to the jurisdiction of the Court, the Court must have sufficient information regarding the arrangements by which the Community envisages submitting to the present and future judicial control machinery established by the Convention.

21 As it is, the Court has been given no detailed information as to the solutions that are envisaged to give effect in practice to such submission of the Community to the jurisdiction of an international court.

22 It follows that the Court is not in a position to give its opinion on the compatibility of Community accession to the Convention with the rules of the Treaty.

[...]

In conclusion,

THE COURT

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissochet and G. Hirsch, Presidents of Chambers, G. F. Mancini, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

after hearing the views of First Advocate General Tesauro and Advocates General Lenz, Jacobs, La Pergola, Cosmas, Léger, Elmer, Fennelly and Ruiz-Jarabo Colomer,

gives the following opinion:

As Community law now stands, the Community has no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Rodríguez Iglesias
Kakouris
Edward
Puissochet
Hirsch
Mancini
Schockweiler
Moitinho de Almeida
Kapteyn
Gulmann
Murray
Jann
Ragnemalm
Sevón
Wathelet

Luxembourg, 28 March 1996.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President