

Opinion 2/94

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

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

Opinion of the Court, 28 March 1996 I - 1763

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))*
3. *European Communities — Conferred powers — Internal and external powers — Express and implied powers (EC Treaty, Art. 3b)*

4. *EC Treaty — Article 235 — Scope — Limits — Amendment of the Treaty — Not permissible*
5. *Community law — Principles — Fundamental rights — Observance of those rights ensured by the Community Court — Account to be taken of the European Convention on Human Rights*
(*Treaty on European Union, Art. F(2)*)
6. *International agreements — Conclusion — Accession to the European Convention on Human Rights — Community not competent as Community law now stands*
(*EC Treaty, Art. 235*)

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.

3. It follows from Article 3b of the Treaty, which states that the Community is to act within the limits of the powers conferred upon it by the Treaty and of the objectives assigned to it therein, that it has only those powers which have been conferred upon it. That principle of conferred powers must be respected in both the internal action and the international action of the Community. The Community acts ordinarily on the basis of specific powers which are not necessarily the express consequence of specific provisions of the Treaty but may also be implied from them. Thus, the competence of the Community to enter into international commitments may not only flow from express provisions of the Treaty but also be implied from those provisions.

Whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community is empowered to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision to that effect.

4. Article 235 is designed to fill the gap where no specific provisions of the Treaty confer on the Community institutions express or implied powers to act, if such powers appear none the less to be necessary to enable the Community to carry out its functions with a view to attaining one of the objectives laid down by the Treaty.

That provision, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the Community. On any view, Article 235 cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which it provides for that purpose.

5. Fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. In that regard, the European Convention on Human Rights, to which reference is made in particular in Article F(2) of the Treaty on European Union, has special significance.

6. 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 because no provision of the Treaty confers on the Community institutions in a general way the power to enact rules concerning human rights or to conclude international agreements in this

field and such accession cannot be brought about by recourse to Article 235 of the Treaty.

Respect for human rights is a condition of the lawfulness of Community acts. Accession by the Community to the European Convention on Human Rights would, however, entail a substantial change in the present Community system for protection of human rights in that it would entail the entry of the Community into a distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order. Such a modification of the system for the protection of human rights in the Community, with equally fundamental institutional implications for the Community and for the Member States, would be of constitutional significance and would therefore be such as to go beyond the scope of Article 235. It could be brought about only by way of Treaty amendment.