



THE IMPOSSIBLE EU ACCESSION TO THE ECHR IN THE OPINION OF THE COURT OF JUSTICE

This article is about the advisory opinion of the European Court of Justice on the draft agreement for the EU accession to the ECHR. It starts with the analysis of the of the EU relevant legal framework and following It analyses the opinion of the Court and its willingness to conclude the case with a rejection. Some consideration is even done on the principle of loyalty among States.

The author makes some critics about the Protocol n. 16 to the ECHR. In fact, Despite It was not a subject of the advisory opinion, it is used by the Court as an argument to show the contrasts between the ECHR and the EU Legal orders. In fact, It might be in conflict with the mechanism of the preliminary rules to the European Court of Justice. This consideration moves from the fact that both the European Court of Justice and the ECtHR would have an exclusive competence in same matters. Thus, the only solution would be that the European Court of recognized the only competence of the ECtHR in the cases which regards Human Rights. On this point, the European Court of Justice in its opinion considered this possibility as inapplicable, because it has always been very jealous of its competences.

Concluding, despite the hard work carried on to reach an agreement, It is currently legally impossible. The only chance for the EU accession is a political decision. After substantially political is art. 6 of the TEU.