

JURISPRUDENCE ON EUROPEAN INTEGRATION

Transparency films (presented in the lectures)

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- see also the materials from the symposiums "Konstitucionālo tiesu prakse. Ceļā no suverenitātes uz integrāciju" / "Verfassungsrechtsprechung zwischen Souveränität und Integration", Rīga, 16.11.2007 and 28.11.2008

- I. The legal nature of the European Union
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§ 2 Basic concepts, implementation and enforcement of the law of the European Union

I. Community law as an independent (distinct) legal order

- 1) Leading case *van Gend & Loos*¹ (1963): new legal order of international law
- 2) Other important decisions
 - a) *Busseni*² (1990): coherence of the Treaties
 - b) *Les Verts*³ (1986), *EEA I* (1991)⁴: the EEC Treaty as a constitutional charter
 - c) *Foto-Frost*⁵ (1987): no jurisdiction of national courts to declare community acts invalid

II. The direct applicability of Community law

- 1) *Van Gend & Loos*⁶ (1963): direct applicability of primary Community law
 - confirmed in the case *Lütticke*⁷ (1966)
- 2) *Leberpfennig*⁸ (1970): direct applicability of decisions
- 3) *Ratti*⁹ (1979): direct applicability of directives
 - see also the case *von Duyn*¹⁰ (1974)

III. The primacy of Community law

- 1) Leading case *Costa/ENEL*¹¹ (1964): primacy of Community law
- 2) *Internationale Handelsgesellschaft*¹² (1970): primacy also over national constitutional law
 - accepted in principle (!) by the constitutional courts of the member states
 - the question of the limits of this primacy is still unsettled (see § 7 of the course)
- 3) *Simmenthal II*¹³ (1978): on the effect of the primacy of Community law
- 4) Other important decisions
 - a) *Commission/Italy*¹⁴ (1986): non-applicable national provisions must be repealed
 - b) *Factortame*¹⁵ (1990): if necessary, conflicting provisions of national law must be neutralized by measures of interim relief

IV. The implementation of Community law by the member states

- note: in the nineties, the far-reaching requirements formulated by the ECJ triggered a controversial discussion about the *Europeanisation of administrative law*
- 1) Leading case *Deutsche Milchkontor*¹⁶ (1983): standards for the implementation of Community law by the member states
 - application in accordance to national law must not affect its scope and effectiveness
 - see presentation by ANITA LANCMANE
 - 2) *Harz*¹⁷ und *Colson und Kamann*¹⁸ (1984): national law to be interpreted in the light of the directives
 - 3) *Factortame*¹⁹ (1990): interim relief to enforce Community law

- 4) *Zuckerfabrik Süderdithmarschen*²⁰ (1991): interim relief also against the implementation of Community law
- 5) *TA-Luft (Commission/Germany)*²¹ (1991): no implementation of directives through administrative practice or administrative provisions
 - not even through the very special "normkonkretisierende Verwaltungsvorschriften"
 - this decision met strong resistance from national administrative law scholars; see, for example, RUPP, *Juristenzeitung* 1991, 1034
- 6) Other important decisions
 - a) *Vin de table (Commission/Germany)*²² (1990): member states must take coercive measures to enforce Community law
 - b) *Alcan*²³ (1997): restricted protection of legitimate expectations in cases of the recovery of illegitimate state aids

V. Directives

- 1) *Ratti* (1979): direct applicability of directives in favour of the citizen after expiration of the implementation period
 - only against the state (vertical, not horizontal effect), but wide concept of the "state": *Foster*²⁴ (1990): also bodies, which, pursuant to a measure adopted by the state, are responsible for providing public services under the control of the state
- 2) *Becker*²⁵ (1982): direct applicability must be ascertained separately for the individual provisions of a directive
 - German Federal Constitutional Court (BVerfGE 75, 223): the jurisprudence on the direct applicability of directives is an admissible judicial development (not a judicial making) of law
- 3) *Harz and Colson and Kamann* (1984): national law to be interpreted in the light of the directives
- 4) *Marshall I*²⁶ (1986): no direct applicability of directives against the citizen
 - no direct horizontal effect
 - confirmed in the case *Faccini Dori*²⁷ (1994) despite the criticism of scholars and advocates general
 - further reading: see the opinion of advocate general LENZ in the case *Faccini Dori*
- 5) *TA-Luft (Commission/Germany)* (1991): no implementation of directives through administrative practice or administrative provisions
- 6) *Inter-Environnement Wallonie*²⁸ (1997): precursory effect of directives during implementation period
 - member states must not take any measures which could seriously compromise the result prescribed
- 7) Other important decisions
 - a) *Vegetable Seed Directive (Commission/Italy)*²⁹ (1976): member states cannot invoke transposition delays in other states to justify their own failure
 - b) *Public Procurement Directive (Commission/Germany)*³⁰ (1995): transposition requires granting of individual [subjective] rights, where the directive is intended to create rights for individuals

- c) *Großkrotzenburg thermal power station (Commission/Germany)*³¹ (1995): objective effect of directives
- even directives, which do not intend to create rights for individuals, may become directly applicable (here: directive 85/377 on the assessment of the effects of certain public and private projects on the environment)

VI. State liability pursuant to Community law

- further reading: BETLEM/PÉREZ GONZÁLEZ/GRANGER/SCHOIBWOHL, Francovich Follow-Up, www.eel.nl [at "dossiers"] (overview on the newest developments)
- 1) Leading case *Francovich*³² (1991): state liability pursuant to Community law for non-implementation of directives
 - reasoning: inherent in the system of the Treaty
 - conditions of liability:
 - result prescribed by the directive entails grant of rights to individuals
 - content of those rights can be identified on the basis of the directive provisions
 - causality
 - 2) Leading case *Brasserie du Pêcheur and Factortame*³³ (1996): state liability pursuant to Community law for violation of directly applicable provisions
 - judges justify the judicial introduction of state liability with the task conferred on them by art. 164 (today: 220) EC Treaty of ensuring "that ... the law is observed" ("sichern ... die Wahrung des Rechts")
 - definition of the conditions of liability analogously to art. 215 (today: 288) sect. 2 EC Treaty in accordance with the general principles common to the laws of the member states
 - in particular: liability only in case of a sufficiently serious breach of Community law, but fault is not a condition of liability
 - liability also for unlawful legislative acts
 - commensurate extent of the reparation (in principle including loss of profit)
 - 3) Other important decisions
 - a) *British Telecommunications*³⁴ (1996): state liability also for incorrect implementation of directives
 - b) *Dillenkofer*³⁵ (1996): on the conditions of a sufficiently serious breach and the grant of rights to individuals
 - c) *Hedley Lomas*³⁶ (1996): state liability also for violation of Community law by administrative practice
 - d) *Köbler*³⁷ (2003): state liability also for violation of Community law by judgements of a supreme court
 - only in case of a *manifest* infringement, in particular of a "manifest breach of the case-law of the Court in the matter"

§ 3 The competences of the European Union

I. Implied powers of the European Communities

- 1) *FÉDÉCHAR*³⁸ (1956): the idea of *implied powers*
- 2) *AETR*³⁹ (1971): implied power to conclude international treaties
 - this decision was confirmed in the case *Kramer*⁴⁰ (1976)
- 3) *Laying-up Fund for Inland Waterway Vessels*⁴¹ (1977): implied power to establish new institutions of public intern. law in intern. treaties

II. The approximation of laws in the internal market

- 1) *Product Safety Directive*⁴² (1994): art. 100a EEC Treaty (today: 95 EC Treaty) empowers also to measures relating to specific products or classes of products
- 2) *Tobacco advertising I*⁴³ (2000): no competence of the Community for a general prohibition of advertising for tobacco products
 - no general competence of the Community to regulate the internal market
 - measures based on art. 100a (today: 95) must intend and contribute to improve (!) the conditions for the establishment or functioning of the internal market
 - one of the first cases of a rigorous review with regard to the competences!
 - note, however, the return to a "generous" review in the case *tobacco advertising II*⁴⁴ (2006): the Community has the competence for a general prohibition of advertising in the radio and in consumer-orientated printed and electronic media, because the existing differences in the national regulations have a negative effect on the internal market...

III. The choice between different legal bases

- 1) *System of generalized preferences I*⁴⁵ (1987)
 - a) choice of the legal basis must be based on objective factors amenable to judicial review
 - b) art. 235 EEC Treaty (today: 308 EC Treaty) only a subsidiary legal basis
- 2) *Airport transit*⁴⁶ (1998): measures under the "Third Pillar" must not encroach upon the powers of the Community
 - in this case the legal basis from *Community* law is relevant
 - insofar ECJ has jurisdiction to review pursuant to art. L (today: 46) EU Treaty

IV. The principle of subsidiarity

- still no important relevant jurisprudence...

V. Other important decisions

- 1) *Accession to ECHR*⁴⁷ (1996): no competence to accede to the European Convention
 - not even arising from art. 235 (today: 308)
- 2) *Immigration policy*⁴⁸ (1987)
 - an example for a purpose-directed handling of Community law (note the style and perspective of the reasoning)
- 3) Other decisions

§ 4 The institutions of the European Union

I. General aspects

- 1) *System of generalized tariff preferences II*⁴⁹ (1995): duty of loyal cooperation of the Community institutions
- 2) *Transparency Directive*⁵⁰ (1982): no dogmatic distinction between Commission directives and Council directives

II. The European Parliament

- 1) *Roquette Frères/Isoglucose*⁵¹ (1980): due consultation of the European Parliament is an essential formality
 - the *institutional balance* as equivalent in Community law to the separation of powers in a state
- 2) *Les Verts*⁵² (1986): possibility to bring actions for annulment against measures adopted by the European Parliament
 - concerning the former art. 173 (today: 230), where these actions were not mentioned
 - reasoning: the EEC is a community based on the rule of law...
- 3) *Tchernobyl I*⁵³ (1990): actions for annulment of the European Parliament
 - concerning the former art. 173, where these actions were not mentioned
 - only to safeguard its prerogatives
 - political reasoning with regard to the institutional balance

§ 5 Fundamental rights and the rule of law in the European Union

- further reading: EHLERS (ED.), European Fundamental Rights and Freedoms, 2007, §§ 14 ff.

I. Basic concepts

- 1) *Stauder*⁵⁴ (1969): Fundamental rights as general principles of Community law
- 2) *Internationale Handelsgesellschaft*⁵⁵ (1970): Primacy of Community law also over national fundamental rights - but fundamental rights will be protected in Community law!
- 3) *Nold*⁵⁶ (1974): the constitutional traditions common to the member states as sources of inspiration for the jurisprudence on fundamental rights in Community law
- 4) *Hauer*⁵⁷ (1979): the constitutional traditions common to the member states and the ECHR as sources of inspiration for the jurisprudence on fundamental rights in Community law

II. General dogmatics of the fundamental rights

- 1) *Nold*⁵⁸ (1974): fundamental rights subject to restrictions in the pursuit of public interests
- 2) *Hauer*⁵⁹ (1979): limits and limits of limits
 - no clear distinction between proportionality and the protection of the essence of the rights
- 3) *Hoechst*⁶⁰ (1989): interpretation of Community law in the light of the fundamental rights, requirement of a legal basis for encroachments, respect of procedural guarantees laid down by national law and other aspects
- 4) *Schmidberger* (2003): fundamental rights as limits of the economic fundamental freedoms
 - see § 6 of the course
- 5) *Kadi/Al Barakaat*⁶¹ (2008): Community acts, which are implementing decisions of the Sanctions Committee of the UN Security Council for the fight against terrorism that do not leave autonomous discretion, are not immune from jurisdiction with regard to the review of their compatibility with fundamental rights
 - example for an effective application of fundamental rights (here: the rights to respect for property, to be heard and to effective judicial review)
- 6) Excursus: Summary and confirmation of the ECJ jurisprudence on limits and limits of limits in art. 52(1) of the Charter of Fundamental Rights

III. The fundamental rights regime of the Union and the member states

- 1) *SPUC v. Grogan*⁶² (1991): Community law does not guarantee the freedom to inform for political reasons about possibilities of abortion in other member states
- 2) *Carpenter*⁶³ (2002): freedom to provide services as an obstacle to the expulsion of one's spouse
 - see presentation by BRETT DAHLBERG
 - further reading: WEATHERILL, 477; MAGER, *Juristenzeitung* 2003, 204

IV. Important decisions on individual fundamental rights (selection)

- see the inventory of fundamental rights in the *European Parliament Fact Sheets 1999 - 2002*, 2.1.1⁶⁴
- 1) *Hauer*⁶⁵ (1979): the right to property and the freedom to pursue trade or profession as fundamental rights in Community law
 - 2) *Hoechst*⁶⁶ (1989): the right to the inviolability of the home as a fundamental right in Community law
 - does not extend to business premises of enterprises (abandoned in the case *Roquette Frères*⁶⁷, 2002)
 - 3) *Banana market organisation*⁶⁸ (1994): freedom to pursue trade or profession may be restricted extremely
 - decision *heavily criticised* by scholars in both, European and constitutional law⁶⁹; the VERWALTUNGSGERICHT FRANKFURT at first refused to follow and referred the case to the German Federal Constitutional Court⁷⁰
 - see also the case *Atlanta Fruchthandelsgesellschaft*⁷¹ (1995)
 - 4) *Directive on biopatents*⁷² (2001): human dignity as a general principle of Community law
 - 5) *Mangold*⁷³ (2005): non-discrimination on grounds of age as a general principle of Community law
 - this *heavily criticised* decision provoked the appeal of the former president of the German Federal Constitutional Court to "Stop the European Court of Justice"⁷⁴
 - after that appel, the ECJ moderated its position in the *Bartsch* judgement⁷⁵ (2008): no prohibition of discrimination where the discriminatory treatment contains no link with Community law
 - 6) *Ordre des barreaux francophones et germanophones*⁷⁶ (2007): on the Money Laundering Directive and the right to a fair trial, professional secrecy and the independence of lawyers

V. Principles of the rule of law

- see also the jurisprudence presented in § 2 of the course

§ 6 The economic fundamental freedoms of the citizens in the European Union

- further reading: PODDUBNY AND OTHERS, EC Internal Market Law. Relevant Cases of the European Court of Justice (script elaborated by students)⁷⁷

I. General dogmatics of the economic fundamental freedoms

- 1) *French blockades*⁷⁸ (1997): member states obliged to intervene against import blockades set up by private persons
 - *duty of protection* to ensure the enforcement of the fundamental freedoms (not yet recognized with regard to the fundamental rights!)
- 2) *Schmidberger*⁷⁹ (2003): fundamental rights as inherent limits of the economic fundamental freedoms

II. The free movement of goods

- 1) *Diamandarbeiders*⁸⁰ (1969): large concept of charges having equivalent effect to custom duties in art. 12 EEC Treaty (today: 25 EC Treaty)
- 2) *Dassonville*⁸¹ (1974): large concept of measures having equivalent effect to quantitative restrictions on imports in art. 30 EEC Treaty (today: 28 EC Treaty)
 - enlarging considerably the range of the free movement of goods
 - "all trading rules ... which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade"
- 3) *Cassis de Dijon*⁸² (1978): regulations on necessary properties of products as measures having equivalent effect to restrictions on imports
- 4) *Waste shipment*⁸³ (1992): waste as goods
- 5) *Keck*⁸⁴ (1993): corrective reduction of the Dassonville formula: only product-related, no (general) sales-related rules

III. The freedom of movement for workers

- 1) *Walrave and Koch*⁸⁵ (1974): horizontal effect of the freedom of movement for workers on collective regulations of private persons concerning employment or the provision of services
- 2) *Bosman*⁸⁶ (1995): freedom of movement for workers of professional football players
 - large concept of encroachment
 - direct *horizontal effect* limiting regulations of sport associations
- 3) *Angonese*⁸⁷ (2000): horizontal effect against employers
 - no discriminating general regulations of employers

IV. The freedom of establishment

- *Centros*⁸⁸ (1999): right to register a branch of a company which has been established in another member state for the only purpose to evade the application of national law and which does not conduct any business in that state

V. The freedom to provide services

- *Laval*⁸⁹ (2007): horizontal effect of the freedom to provide services against trade unions
 - further reading: REICH, *Juridica International* 2007, 100
 - horizontal effect also limits collective actions
 - noticeable biased balancing in favour of the economic fundamental freedoms and to the disadvantage of human rights

§ 7 Membership and participation of the state in the European Union

- compilation with regard to important legal aspects; see for details, references and further aspects *Diagram 2*. See also the materials from the symposiums "Konstitucionālo tiesu prakse. Ceļā no suverenitātes uz integrāciju" / "Verfassungsrechtsprechung zwischen Souveränität und Integration", Rīga, 16.11.2007⁹⁰ and 28.11.2008⁹¹

I. The legal nature of the European Union

- 1) Bundesverfassungsgericht (Germany): *Maastricht judgement*⁹² (1993): the EU is a "Staatenverbund"
- 2) Trybunał Konstytucyjny (Poland): *EU Accession Treaty*⁹³ (2005): EU not a supranational but special international organisation

II. The general acceptance of the primacy of Community law by the constitutional courts of the member states

- 1) Corte costituzionale (Italy)
 - *Granital* (1984)⁹⁴; *Beca* (1985)
- 2) Bundesverfassungsgericht (Germany)
 - *powdered milk*⁹⁵ (1971); *Solange II*⁹⁶; *night work*⁹⁷ (1992)
- 3) Verfassungsgerichtshof (Austria)
 - *university entrance qualification*⁹⁸ (1997)
- 4) Conseil constitutionnel (France)
 - *économie numérique*⁹⁹ (2004): (constitutional demand (!) to transpose directives)
 - *copyright in the information society*¹⁰⁰ (2006): no transposition of directives running counter to the constitutional identity of France
- 5) Riigikohus (Estonia)
 - *elections coalitions II*¹⁰¹ (2005), *opinion on monetary union*¹⁰² (2006)
- see presentation by BERIT AAVIKSOO
- 6) Trybunał Konstytucyjny (Poland)
 - *EU Accession Treaty* (2005)
- 7) Konstitucinis Teismas (Lithuania)
 - however, no primacy over national constitutional law (2006)

III. The protection of fundamental rights at the national and European level from the perspective of the national constitutional courts

- 1) Corte costituzionale
 - a) *Frontini Franco*¹⁰³ (1973): protection of the essence of the national fundamental rights
 - by examining the continuing (!) compatibility of the founding treaties with the fundamental principles of the constitution
 - b) *Granital* (1984): primacy of Community law with reservation of the safeguard of the essence of the national fundamental rights
- 2) Bundesverfassungsgericht
 - a) *EEC regulations*¹⁰⁴ (1967): no constitutional complaints against regulations
 - b) *Solange I*¹⁰⁵ (1974): protection of the fundamental rights in the Basic Law against the law of the European Communities *as long as* the latter does not include an own binding catalogue of fundamental rights
 - c) *Solange II*¹⁰⁶ (1986): We will not exercise our jurisdiction to decide on the applicability of secondary Community law *as long as* the Communities ensure an effective protection of fundamental rights
 - d) *Maastricht judgement*¹⁰⁷ (1993): "relationship of cooperation" ["Kooperationsverhältnis"] between the BVerfG and the ECJ
 - e) *Banana market organisation*¹⁰⁸ (2000): protection of fundamental rights according to the "Solange II" formula
 - f) *European arrest warrant*¹⁰⁹ (2005): national legislator must use the latitudes left by EU framework decisions in a manner considerate with fundamental rights
- 3) Conseil constitutionnel: *Maastricht I*¹¹⁰ (1992): sufficient protection of fundamental rights guaranteed in the EU
- 4) Trybunał Konstytucyjny (Poland)
 - *European arrest warrant* (2005)
- 5) Ústavní soud (Czech Republic)
 - *European arrest warrant* (2006)

IV. The enforcement of the limits of competences from the perspective of the constitutional courts and supreme courts of the member states

- 1) Bundesverfassungsgericht: *Maastricht judgement*¹¹¹ (1993): we will control if the legal acts of the Union comply with the limits of its competences
- 2) Hojesteret (Danish Supreme Court): *Maastricht judgement*¹¹² (1998): no application of legal acts exceeding the Union's competences in Denmark
 - all Danish courts entitled to review and reject
 - note: the Hojesteret does not mention and discuss the heavy criticism of the German Maastricht judgment in legal science...
- 3) Trybunał Konstytucyjny: *EU Accession Treaty* (2005): legal acts exceeding the Union's competences do not enjoy primacy over national law
 - final decision lies with the institutions of the member states
- 4) see also *Konstitucinis Teismas* (2006): ECJ has exclusive power to review the legal acts of the Union

V. Other problems of membership and participation in the European Union (selection)

- 1) No real transfer of sovereign rights to the European Union
 - Bundesverfassungsgericht: *Solange I* (1974)
 - Trybunał Konstytucyjny: *EU Accession Treaty* (2005)
- 2) The order to apply supranational law [Rechtsanwendungsbefehl] as basis for the direct validity and applicability of Community law within the state
 - Bundesverfassungsgericht: *Solange II* (1986)
- 3) Limits for the transfer of competences to the European Union
 - Bundesverfassungsgericht: *Maastricht judgement* (1993)
 - Ústavní soud (Czech Republic): *Lisbon judgement* (2008)
- 4) Democracy in the EU
 - Bundesverfassungsgericht: *Maastricht judgement* (1993)
 - Bundesverfassungsgerichts: *Allocation of seats in the European Parliament* (1995)
- 5) The right of foreign Union citizens to vote and to stand as a candidate at local elections
 - Conseil constitutionnel: *Maastricht I* (1992)¹¹³
 - Trybunał Konstytucyjny: *EU Accession Treaty* (2005)
- 6) The participation at the monetary union
 - Bundesverfassungsgericht¹¹⁴: Euro introduction no violation of human rights (1998)
- see presentation by JELENA SEREDIŃA
 - Riigikohus¹¹⁵: Estonian constitution allows participation; competences of Eesti Pank will change (2005)
- see presentation by BERIT AAVIKSOO
- 7) The admissibility of the judicial development [not: making] of law by the European Court of justice
 - Bundesverfassungsgericht: *Kloppenburg*¹¹⁶ (1987)
- 8) The European Court of Justice as lawful judge
 - Bundesverfassungsgericht: *Solange II* (1986)
 - Verfassungsgerichtshof (Austria): *Bundesvergabeamt*¹¹⁷ (1995)
- 9) No abstract review of conformity of national law with EU law
 - Riigikohus: *elections coalitions II* (2005)

VI. Other aspects

- see *Diagram 2*
- on the constitutionality of the **ratification of the Treaty of Lisbon** see the Lisbon judgements of the Ústavní soud (2008) and the coming Lisbon judgements of the *Satversmes tiesa* (2009) and the *Bundesverfassungsgericht* (2009)

Notes:

- 1 ECJ, case 26/62, van Gend & Loos, [1963] ECR 1 (23 ff.).
- 2 ECJ, case 221/88, Busseni, no. 13 ff.
- 3 ECJ, case 294/83, Les Verts, no. 23.
- 4 ECJ, opinion 1/91, EEA I, no. 21.
- 5 ECJ, case 314/85, Foto Frost, no. 15 ff.
- 6 ECJ, case 26/62, van Gend & Loos, [1963] ECR 1 (25 f.)
- 7 ECJ, case 57/65, Lütticke.
- 8 ECJ, case 9/70, Leberpfennig, no. 5 ff.
- 9 ECJ, case 148/78, Ratti, no. 19 ff.
- 10 ECJ, case 41/74, von Duyn.
- 11 ECJ, case 6/64, Costa/ENEL, [1964] ECR 1251 (1269 ff.).
- 12 ECJ, case 11/70, Internationale Handelsgesellschaft, no. 3 f.
- 13 ECJ, case 106/77, Simmenthal II, no. 17 ff.
- 14 ECJ, case 168/85, Commission/Italy, summary, 1.
- 15 ECJ, case C-213/89, Factortame, no. 20 f.
- 16 ECJ, joint cases 205-215/82, Deutscher Milchkontor, no. 17 ff.
- 17 ECJ, case 79/83, Harz, summary, 1.
- 18 ECJ, case 14/83, Colson and Karmann, summary, 1.
- 19 ECJ, case C-213/89, Factortame, no. 20 f.
- 20 ECJ, joint cases C-143/88 a.o., Zuckerfabrik Süderdithmarschen, no. 16 f., 22 ff.
- 21 ECJ, case C-361/88, Technische Anleitung zur Reinhaltung der Luft (Commission/Germany), no. 20 f., 24.
- 22 ECJ, case C-217/88, vin de table, no. 14 ff., 33.
- 23 ECJ, case C-24/95, Alcan, no. 25, 34.
- 24 ECJ, case C-188/89, Foster, no. 19 f.
- 25 ECJ, case 8/81, Becker, no. 21 ff.
- 26 ECJ, case 152/84, Marshall I, no. 48 ff.
- 27 ECJ, case C-91/92, Faccini Dori, [1994] ECR I-3325 (= WE, 137), no. 23 ff.
- 28 ECJ, case C-129/96, Inter-Environnement Wallonie, [1997] ECR I-7411, no. 44 ff.
- 29 ECJ, case 52/75, Vegetable Seed Directive (Commission/Italy), no. 11 ff.
- 30 ECJ, case C-433/93, Public Procurement Directive (Commission/Germany), no. 18 ff.
- 31 ECJ, case C-431/92, Großkrotzenburg thermal power station (Commission/Germany), no. 24 ff.
- 32 ECJ, joint cases C-6/90 and C-9/90, Francovich, [1991] ECR I-5357, no. 31 ff.
- 33 ECJ, joint cases C-46/93 and C-48/93, Brasserie du Pêcheur and Factortame, [1996] ECR I-1029, no. 16 ff.
- 34 ECJ, case C-392/93, British Telecommunications, no. 40 ff.
- 35 ECJ, joint cases C-178/94 and others, Dillenkofer, no. 23 ff.
- 36 ECJ, case C-5/94, Hedley Lomas, no. 28.
- 37 ECJ, case C-224/01, Köbler, no. 32 ff., 51 ff.
- 38 ECJ, case 8/55, FÉDÉCHAR, p. 299.
- 39 ECJ, case 22/70, AETR, no. 13 ff.
- 40 ECJ, joint cases 3, 4 and 6, Kramer, no. 13 ff.
- 41 ECJ, opinion 1/76, Laying-up Fund for Inland Waterway Vessels, no. 3 ff.
- 42 ECJ, case C-359/92, Product Safety Directive, no. 37.
- 43 ECJ, case C-376/98, Tobacco advertising I, no. 76 ff.
- 44 ECJ, case C-380/03, Tobacco advertising II.
- 45 ECJ, case 45/86, System of generalized preferences I, no. 11, 13; confirmed in 1991 in: ECJ, case C-300/89, titanium dioxide, no. 11, 13.
- 46 ECJ, case C-170/96, airport transit, no. 14 ff.
- 47 ECJ, opinion 2/94, accession to ECHR, no. 24 ff.
- 48 ECJ, joint cases 281, 283 - 285, 287/85, immigration policy, no. 10 ff.
- 49 ECJ, case C-65/93, System of generalized tariff preferences II, no. 21 ff.; see also ECJ, case 204/86, Greece/Council, no. 16.
- 50 ECJ, joint cases 188 - 190/80, transparency directive, no. 4 ff.
- 51 ECJ, case 138/79, Roquette Frères/Isoglucose, Summary, 4, no. 33 ff.
- 52 ECJ, case 294/83, Les Verts, no. 21 ff.
- 53 ECJ, case C-70/88, Tschernobyl I, no. 16 ff.
- 54 ECJ, case 29/69, Stauder, no. 7 (just a passing remark).
- 55 ECJ, case 11/70, Internationale Handelsgesellschaft, no. 4; note the context with the postulation of primacy of Community law over national constitutional law.
- 56 ECJ, case 4/73, Nold, no. 12 ff.
- 57 ECJ, case 44/79, Hauer, no. 14 ff.
- 58 ECJ, case 4/73, Nold, 14 f.
- 59 ECJ, case 44/79, Hauer, no. 19 ff.
- 60 ECJ, joint cases 46/87 and 227/88, Hoechst, no. 12 ff.
- 61 ECJ, joint cases C-402/05 P., C-415/05 P., no. 278 ff.
- 62 ECJ, case C-159/90, SPUC v. Grogan, no. 22 ff.
- 63 ECJ, case C-60/00, Carpenter, no. 37 ff.
- 64 www.europarl.eu.int/factsheets/2_1_1_en.htm.
- 65 ECJ, case 44/79, Hauer, no. 17 ff., 31 f.
- 66 joint cases 46/87 and 227/88, Hoechst, no. 17 f.
- 67 ECJ, case C-94/00, Roquette Frères, no. 29 with regard to ECHR, 16.04.2002, Stés Colas Est a.o. v. France.
- 68 ECJ, case C-280/93, banana market order, no. 81 ff.

- 69 See, for example, *Huber*, Europäische Zeitschrift für Wirtschaftsrecht 1997, 517; *Stein*, Europäische Zeitschrift für Wirtschaftsrecht 1998, 261; *Rupp*, Juristenzeitung 1998, 213.
- 70 See *Verwaltungsgericht Frankfurt*, Europäische Zeitschrift für Wirtschaftsrecht 1997, 182. The decision of the Federal Constitutional Court (BVerfGE 102, 147) will be studied in § 7 of the course.
- 71 ECJ, case C-466/93, Atlanta Fruchthandels-gesellschaft.
- 72 ECJ, case C-377/98, directive on biopatents, no. 69 ff.
- 73 ECJ, case C-144/04, Mangold.
- 74 *Roman Herzog/Lüder Gerken*, Stop the European Court of Justice, EU Observer 10.09.2008 (<http://euobserver.com/9/26714/?rk=1>) = Stoppt den Europäischen Gerichtshof, FAZ vom 08.09.2008, p. 8.
- 75 ECJ, case C-427/06, Bartsch.
- 76 ECJ, case C-305/05, Ordre des barreaux francophones et germanophone.
- 77 Script elaborated by participants of the course "Business Law - EC Internal Market Law" (MBA programm, autumn semester 2007), for the preparation of the examinations, http://home.lanet.lv/~tschmit1/Downloads/Poddubny-and-others_Relevant_ECJ-Cases.pdf.
- 78 ECJ, case C-265/95, French blockades.
- 79 ECJ, case C-112/00, Schmidberger, no. 71 ff., in particular no. 74.
- 80 ECJ, joint cases 2 and 3/69, Diamantarbeiders.
- 81 ECJ, case 8/74, Dassonville.
- 82 ECJ, case 120/78, Cassis de Dijon.
- 83 ECJ, case C-2/90, waste shipment.
- 84 ECJ, joint cases C-267, C-268/91, Keck.
- 85 ECJ, case 36/74, Walrave and Koch.
- 86 ECJ, case C-415/93, Bosman.
- 87 ECJ, case C-281/98, Angonese.
- 88 ECJ, case C-212/97, Centros.
- 89 ECJ, case C-341/05, Laval.
- 90 [Http://home.lanet.lv/~tschmit1/Veranstaltungen/Simpozij_16.11.2007.htm](http://home.lanet.lv/~tschmit1/Veranstaltungen/Simpozij_16.11.2007.htm) (in Latvian) and [/Symposium_16.11.2007.htm](#) (in German).
- 91 [Http://home.lanet.lv/~tschmit1/Veranstaltungen/Simpozij_28.11.2008.htm](http://home.lanet.lv/~tschmit1/Veranstaltungen/Simpozij_28.11.2008.htm) (in Latvian) and [/Symposium_28.11.2008.htm](#) (in German).
- 92 BVerfGE 89, 155.
- 93 Case K 18/04.
- 94 Sent. 170/84.
- 95 BVerfGE 31, 145.
- 96 BVerfGE 73, 339 (366 ff.).
- 97 BVerfGE 85, 191.
- 98 Case B877/96.
- 99 Case 2004-496 DC.
- 100 Case 2006-540 DC, no. 16 ff.
- 101 Case 3-4-1-1-05.
- 102 Opinion 3-4-1-3-06.
- 103 EuR 1974, 255 (in particular p. 261 f.).
- 104 BVerfGE 22, 293 (296 ff.).
- 105 BVerfGE 37, 271 (summary, 1 and p. 277 ff.).
- 106 BVerfGE 73, 339 (summary, 2 and p. 366 ff.).
- 107 BVerfGE 89, 155 (summary, 7 and p. 173 ff.).
- 108 BVerfGE 102, 147 (summary, 1 and 2, and p. 160 ff.).
- 109 BVerfGE 113, 273.
- 110 See the part "Sur la garantie des droits et libertés des citoyens".
- 111 BVerfGE 89, 155 (summary, 5 and 6, and p. 187 f.).
- 112 Case I 361/1997.
- 113 Case 92-308 DC. See also the much stricter view of the Bundesverfassungsgericht (BVerfGE 83, 37), concerning the right to vote of foreigners in general; see now, however, the new regulation in art. 28(1) phrase 3 BL, which avoided this problem in context with the Treaty of Maastricht.
- 114 BVerfGE 97, 350.
- 115 Opinion 3-4-1-3-06.
- 116 BVerfGE 75, 223.
- 117 Case B2300/95.