

## EUROPEAN UNION LAW

**Diagram 5****The most important decisions of the European Court of Justice<sup>1</sup>****Preliminary remark**

Since European Union law is a continental European and not a common law system, there is *no "case-law"* in the proper sense *but only jurisprudence of the European Court of Justice*. The doctrine of precedent (*stare decisis*) does not apply. However, the ECJ often refers to dogmatic statements in previous judgements. Therefore, the practical effect of its jurisprudence can be rather similar.

<b>Basic concepts, implementation and enforcement of Community (Union) law</b>			
<b>name</b>	<b>year</b>	<b>substance</b>	<b>reference</b>
<b>Van Gend &amp; Loos</b> (case 26/62)	1963	<ul style="list-style-type: none"> <li>Community law as an independent (distinct) legal order</li> <li>direct applicability of primary Community law</li> </ul>	[1963] ECR 1 We <sup>2</sup> , 95, 109, 185
<b>Costa/ENEL</b> (case 6/64)	1964	<ul style="list-style-type: none"> <li>primacy of Community law</li> <li>- also over <i>later</i> national law</li> </ul>	[1964] ECR 585 We, 85, 185, 187
<b>Internat. Handelsgesellschaft</b> (case 11/70)	1970	<ul style="list-style-type: none"> <li>primacy of Community law also over national constitutional law<sup>3</sup></li> </ul>	[1970] ECR 1125
<b>Ratti</b> (case 148/78)	1979	<ul style="list-style-type: none"> <li>direct applicability of directives in favour of the citizen after expiration of the implementation period<sup>4</sup></li> <li>- if the directive is unconditional and sufficiently precise</li> </ul>	[1979] ECR 1629 We, 129
<b>Deutscher Milchkontor</b> (joint cases 205-215/82)	1983	<ul style="list-style-type: none"> <li>obligation of member states to implement Community law</li> <li>- application in accordance to national law; this must not, however, affect the scope and effectiveness of Community law</li> <li>when recovering unduly paid Community aids, exceptions (with regard to the protection of legitimate expectation etc.) may be applied, but the Community's interests must be "taken fully into account"</li> </ul>	[1983] ECR 2633
<b>Harz</b> (case 79/83)	1984	<ul style="list-style-type: none"> <li>national law to be interpreted in the light of the directives</li> </ul>	[1984] ECR 1921
<b>Foto-Frost</b> (case 314/85)	1987	<ul style="list-style-type: none"> <li>national courts have no jurisdiction to declare community acts invalid</li> </ul>	[1987] ECR 4199 We, 203, 247
<b>Factortame</b> (case C-213/89)	1990	<ul style="list-style-type: none"> <li>national courts must grant interim relief to enforce Community law (regardless of adverse provisions of national law)</li> </ul>	[1990] ECR I-2433 We, 123
<b>TA-Luft</b> (case C-361/88)	1991	<ul style="list-style-type: none"> <li>no implementation of directives through administrative practice or administrative provisions</li> </ul>	[1991] ECR I-2567
<b>Francovich</b> (joint cases C-6/90 and 9/90)	1991	<ul style="list-style-type: none"> <li>state liability pursuant to Community law for non-implementation of directives</li> </ul>	[1991] ECR I-5357 We, 162

<sup>1</sup> See also the more extensive compilation at <http://www.iuspublicum-thomas-schmitz.uni-goettingen.de/Lehre/Jurisprudence-on-integration-1.htm>.

<sup>2</sup> Casebook *Weatherill, Cases and Materials on EU Law*, 8th edition 2007.

<sup>3</sup> Since this judgement and its acceptance by the then member states, the primacy over national constitutional law constitutes a central *component of the acquis communautaire*. Only its limits (the identity of the national constitution) are disputed. All later joining states recognized it in the accession treaties as a legal condition for their membership. Nevertheless, it is challenged in the constit. jurisprudence in Greece, Spain, Poland and Lithuania.

<sup>4</sup> Note: There is no direct application *against* the citizen (horizontal effect), ECJ, case 152/84, Marshall I, [1986].

<b>Brasserie du Pêcheur/Factortame</b> (joint cases C-46/93 and 48/93)	1996	<ul style="list-style-type: none"> <li>state liability pursuant to Community law for violation of directly applicable provisions</li> <li>- judges justify the judicial introduction of state liability with the task conferred on them by art. 164 EC Treaty (today: 19(1) EU Treaty) of ensuring "that ... the law is observed"</li> <li>- definition of the conditions of liability analogously to art. 215(2) EC Treaty (today: 340 FEU Treaty) in accordance with the general principles common to the laws of the member states</li> <li>- liability only in case of a sufficiently serious breach of Community law</li> <li>- liability also for unlawful legislative acts</li> <li>- fault no condition of liability</li> <li>- remarks on the extent of reparation</li> </ul>	[1996] ECR I-1029 We, 171 HV, 176
<b>Competences and institutions</b>			
<b>name</b>	<b>year</b>	<b>substance</b>	<b>reference</b>
FÉDÉCHAR (case 8/55)	1956	<ul style="list-style-type: none"> <li>the idea of <i>implied powers</i></li> <li>- "... it is possible to apply a rule of interpretation generally accepted in both international and national law, according to which the rules laid down by an international treaty or a law presuppose the rules without which that treaty or law would have no meaning or could not be reasonably and usefully applied."</li> </ul>	[1956] ECR 292 HV, 133
Roquette Frères / Isoglucose (case 138/79)	1980	<ul style="list-style-type: none"> <li>due consultation of the European Parliament [the kind of participation at that time] is an essential formality</li> <li>- "essential factor in the <i>institutional balance</i> intended by the Treaty"</li> <li>- "reflects ... the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly"</li> </ul>	[1980] ECR 3333 HV, 158, 164
<b>Economic fundamental freedoms</b>			
<b>name</b>	<b>year</b>	<b>substance</b>	<b>reference</b>
Diamantarbeiders (cases 2 and 3/69)	1969	<ul style="list-style-type: none"> <li>large concept of charges having equivalent effect to custom duties in art. 12 EEC Treaty (today: 30 FEU Treaty)</li> <li>- any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, even if it is not imposed for the benefit of the state, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product.</li> </ul>	[1969] ECR 211
Dassonville (case 8/74)	1974	<ul style="list-style-type: none"> <li>large concept of measures having equivalent effect to quantitative restrictions on imports in art. 30 EEC Treaty (today: 34 FEU Treaty)<sup>5</sup></li> <li>- "all trading rules enacted by member states which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade"</li> </ul>	[1974] ECR 837 We, 336
van Binsbergen (case 33/74)	1974	<ul style="list-style-type: none"> <li>large concept of encroachments on the freedom to provide services: also non-discriminating restrictions (by indistinctly applicable measures)</li> <li>- all "requirements ... which may prevent or otherwise obstruct the activities of the person providing the service" (however, they may be justified by the general good)</li> </ul>	[1974] ECR 1299
Walrave and Koch (case 36/74)	1974	<ul style="list-style-type: none"> <li>horizontal effect of the freedom of movement for workers on collective regulations of private persons concerning employment or the provision of services</li> </ul>	[1974] ECR 1405
Cassis de Dijon (case 120/78)	1978	<ul style="list-style-type: none"> <li>regulations on necessary properties of products as measures having equivalent effect to restrictions on imports (in the sense of art. 30 EEC Treaty, today: 34 FEU Treaty)</li> <li>- de facto introduction of the country of origin principle</li> <li>- however: possible justification by "mandatory requirements" of public interests (⇒ inherent limits - proportionality)</li> </ul>	[1979] ECR 649 We, 375

<sup>5</sup> Note, however, the important corrective reduction of the Dassonville formula in the decision Keck from 1993.

<b>Keck</b> (joint cases C-267, C-268/91)	1993	<ul style="list-style-type: none"> <li>• corrective reduction of the Dassonville formula: only product-related, not sales-related rules</li> <li>- regulations on the general conditions of sale are no measures having equivalent effect to quantitative restrictions on imports</li> </ul>	[1993] ECR I-6097 We, 391; HV, 466
<b>Gebhard</b> (case C-55/94)	1995	<ul style="list-style-type: none"> <li>• the freedom of establishment as a general prohibition of restrictions: Measures liable to "hinder or make less attractive the exercise" of the freedom also represent an encroachment that needs to be justified</li> <li>• such encroachments are only justified if they are <ul style="list-style-type: none"> <li>• applied in a non-discriminatory manner;</li> <li>• justified by imperative requirements in the general interest;</li> <li>• proportionate (suitable and necessary)</li> </ul> </li> </ul>	[1995] ECR I-4165 We, 316
<b>Bosman</b> (case C-415/93)	1995	<ul style="list-style-type: none"> <li>• freedom of movement for workers of professional football players</li> <li>- large concept of encroachment: even non-discriminative restrictions<sup>6</sup></li> <li>- <i>direct horizontal effect</i> of art. 48 EEC Treaty (today: 45 FEU Treaty): applies also to regulations of sport associations for professional football players</li> <li>- unjustified encroachment by transfer rules and the nationality clauses for matches in championships</li> </ul>	[1995] ECR I-4921
<b>French blockades</b> (case C-265/95)	1997	<ul style="list-style-type: none"> <li>• member states obliged to intervene against import blockades set up by private persons (art. 30 read together with art. 5 EC Treaty, today: art. 34 FEU Treaty read together with art. 4(3) EU Treaty)</li> </ul>	[1997] ECR I-6959 We, 347
<b>Schmidberger</b> (case C-112/00)	2003	<ul style="list-style-type: none"> <li>• fundamental rights as inherent limits to the economic fundamental freedoms</li> </ul>	[2003] ECR I-5659 We, 349, 407
<b>Fundamental rights</b>			
<b>name</b>	<b>year</b>	<b>substance</b>	<b>reference</b>
<b>Stauder</b> (case 29/69)	1969	<ul style="list-style-type: none"> <li>• Fundamental rights as general principles of Community law<sup>7</sup></li> </ul>	[1969] ECR 419 We, 65, 184 HV, 301
<b>Nold</b> (case 4/73)	1974	<ul style="list-style-type: none"> <li>• the constitutional traditions common to the member states are the basis for the own jurisprudence on fundamental rights</li> <li>- international human rights treaties to which the member states have acceded, can also supply guidelines</li> <li>• fundamental rights are protected subject to restrictions in the pursuit of public interests</li> </ul>	[1974] ECR 491 We, 65 HV, 303
<b>Hauer</b> (case 44/79)	1979	<ul style="list-style-type: none"> <li>• the constitutional traditions common to the member states and the ECHR are the basis for the own jurisprudence on fundamental rights</li> <li>• the right to property and the freedom to pursue trade or profession as fund. rights<sup>8</sup></li> <li>• the principle of proportionality as limit of limits; absolute protection of the essence of the rights</li> </ul>	[1979] ECR 3727 We, 68 HV, 304
<b>Carpenter</b> (case C-60/00)	2002	<ul style="list-style-type: none"> <li>• With regard to the fundamental right to respect for family life, the home state of a service provider who provides services in other member states must not refuse the right to reside in its territory to that provider's spouse, who is a national of a third country; art. 49 EC Treaty (today: 56 FEU Treaty) is to be interpreted to that effect in the light of that fundamental right</li> <li>- consequence: the expulsion of the spouse violates the freedom to provide services of the husband (who must take care himself of his children...)</li> <li>- problematic: thus the member states are bound to the fundamental rights of the European Union even beyond the implementation and application of Union law</li> </ul>	[2002] ECR I-6279 We, 477

(Datei: Diagram 5 (EU Law))

<sup>6</sup> Note, however, the corrective reduction in ECJ, case C-190/98, *Graf*, [2000] ECR I-493: the effect must not be too uncertain or too indirect to affect the access to the labour market.

<sup>7</sup> Note, that according to the decision in the case *Internationale Handelsgesellschaft* from 1970 (see above, p. 1) the protection of fundamental rights in the Communities is provided at the level of Community law and not of national constitutional law.

<sup>8</sup> Inventories of the individual fundamental rights, which have been worked out by the ECJ, can be found at *Hummer/Simma/Vedder*, *Europarecht in Fällen*, 3<sup>rd</sup> edition 1999, p. 436 ff.; *Kingreen*, in: *Calliess/Ruffert* (editors), *EUV/EGV*, 2<sup>nd</sup> edition 2002, art. 6 EU Treaty no. 93 ff.