Diagram 1
Important decisions of the European Court of Justice
(updated edition 2011)

Preliminary remark
Note that the law of the European Union is a continental European and not a common law legal system. Thus, court decisions interpret the law but do not make the law, and the findings are not binding for later judgements. There is European jurisprudence but no European "case-law" in the proper sense. The doctrine of precedent (stare decisis) does not apply to the European Court of Justice. This affects the dealing with the jurisprudence. The ECJ often refers to previous judgements, but mostly superficially to some dogmatic statements only, not to the decision as a whole, and without regard to the facts of the case. Usually, it does not deal with its own jurisprudence as a common law court does with its case-law. Under the pressure of criticism from the Advocates General, legal science or other courts, it sometimes deviates from its former jurisprudence. For legal science, its interpretation of the law is important but not binding, since (like that of other courts) it may be wrong. For a lawyer, this means that the reference to decisions of the ECJ cannot replace one's own legal argumentation!

Basic concepts, implementation and enforcement of Community (Union) law

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<thead>
<tr>
<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
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<tbody>
<tr>
<td>Van Gend &amp; Loos</td>
<td>1963</td>
<td>• Community law as independent (distinct) legal order</td>
<td>[1963] ECR 1 W, 95,109, 185 HV, 1</td>
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<tr>
<td>(case 26/62)</td>
<td></td>
<td>• direct applicability of primary Community law</td>
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<td>Costa/ENEL</td>
<td>1964</td>
<td>• primacy of Community law</td>
<td>[1964] ECR 585 W, 85, 185, 187 HV, 33</td>
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<td>(case 6/64)</td>
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<td>- also over later national law</td>
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<td>• Court of Justice will &quot;extract&quot; the relevant questions from references</td>
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<td>for preliminary rulings</td>
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<td>Internat. Handels-</td>
<td>1970</td>
<td>• primacy of Community law also over national constitutional law(^4)</td>
<td>[1970] ECR 1125 HV, 35</td>
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<td>gesellschaft</td>
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<td>- also over national fundamental rights</td>
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<tr>
<td>(case 11/70)</td>
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<td>- however: fundamental rights will be protected in Community law!</td>
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<td>Leberpfennig (Franz</td>
<td>1970</td>
<td>• direct applicability of decisions addressed to the member states in</td>
<td>[1970] ECR 825 HV, 7</td>
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<td>Grad)</td>
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<td>favour of the citizen</td>
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<td>(case 9/70)</td>
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<td>- if the decision is unconditional and sufficiently precise</td>
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<td>Ratti</td>
<td>1979</td>
<td>• direct applicability of directives in favour of the citizen after</td>
<td>[1979] ECR 1629 We, 129 HV, 9</td>
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<tr>
<td>(case 148/78)</td>
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<td>expiration of the implementation period(^5)</td>
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<tr>
<td></td>
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<td>- if the directive is unconditional and sufficiently precise</td>
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1 In most cases preliminary rulings under art. 267 FEU Treaty (formerly 234 EC Treaty and 177 EEC Treaty).
4 Since this judgement and its acceptance by the then member states, the primacy also over national constitutional law constitutes a central component of the acquis communautaire. Only is limits (the core or identity of the national constitution) are disputed. All member states that joint the Communities or Union later recognized it in the accession treaty as a legal condition for their membership. Nevertheless, nowadays it is challenged in the constitutional jurisprudence in Greece, Spain, Poland and Lithuania (see diagram 2).
5 See also ECJ, case 41/74, van Duyn, [1974] ECR 1337 (= We, 109, 436). Note: There is no direct application against the citizen (horizontal effect), ECJ, case 152/84, Marshall I, [1986] ECR 723 (= We, 132); ECJ, case C-91/92, Faccini Dori, [1994] ECR I-3325 (= We, 137, 164). There is, however, a wide concept of the "state"; against which directives might be applied. It includes bodies which, pursuant to a measure adopted by the state, are responsible for providing public services under the control of the state, ECJ, case C-188/89, Foster, [1990] ECR I-3313 (= We, 138). The direct applicability must be ascertained separately for the individual provisions of a directive, ECJ, case 8/81, Becker, [1982] ECR 53.
<table>
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<tr>
<th>Case Study</th>
<th>Year</th>
<th>Key Points</th>
<th>References</th>
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<td>Schmitz, Important decisions of the ECJ, page 2 -</td>
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| Simmenthal II              | 1978 | • the effect of the primacy of Community law  
- primacy in application: non-application of colliding norms of national law, without prior abrogation by the legislator, the constitutional court etc.  
- problematic: also (hierarchical) primacy in validity? "... preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions." | [1978] ECR 629 We, 86, 89 HV, 36 |
| Deutscher Milchkontor      | 1983 | • implementation of Community law by the member states  
- obligation of implementation under art. 5 EEC Treaty (later: art. 10 EC Treaty, today: art. 4(3) EU Treaty)  
- application in accordance to national law; this must not, however, affect the scope and effectiveness of Community law  
• principles for the recovery of unduly paid Community aids  
- provisions excluding the recovery (with regard to such considerations as protection of legitimate expectation, loss of unjustified enrichment, passing of time-limits or awareness of the administration etc.) may be applied  
- however, the interests of the Community must be "taken fully into account" | [1983] ECR 2633 HV, 268 |
| Harz                       | 1984 | • national law to be interpreted in the light of the directives7 | [1984] ECR 1921 HV, 29 |
| Foto-Frost                 | 1987 | • national courts have no jurisdiction to declare community acts invalid  
- reasoning: option to get a preliminary ruling, coherence of the system of judicial protection, unity of the Community legal order, legal certainty | [1987] ECR 4199 We, 203, 247 HV, 261 |
| Busseni                    | 1990 | • coherence of the Treaties  
| vin de table               | 1990 | • If necessary, the member states have to take coercive measures to enforce Community law  
- in case of unforeseeable problems there is a duty of loyal cooperation with the Commission | [1990] ECR I-2879 HV, 209 |
| Factortame                 | 1990 | • interim relief to enforce Community law  
- courts of the member states must grant interim relief regardless of adverse provisions of national law | [1990] ECR I-2433 We, 123 HV, 38 |
| Zuckerfabrik Süderdithmarschen | 1991 | • interim relief also against the implementation of Community law  
- courts of the member states may suspend enforcement of administrative measures based on Community regulations  
- restrictive conditions: • serious doubts as to the validity of the Community act,  
• question referred to the ECJ, • applicant threatened with serious and irreparable damage, • due account of the interest of the Community that its acts have full effect | [1991] ECR I-415 We, 248 HV, 220 |
| TA-Luft                    | 1991 | • no implementation of directives through administrative provisions  
(not even through "norm-concretising administrative provisions")  
- provisions must bind not only the administration but also third parties  
- reasoning: legal certainty (individuals must be in a position to know with certainty the full extent of their rights)  
• no implementation of directives through administrative practice6 | [1991] ECR I-2567 HV, 170 |

6 The ECJ finally made it clear in the joint cases C-10/97 - C-22/92, IN.CO.GE.’90 a.o., [1998] ECR I-6307, that there is only a primacy of application.
7 See also ECI, case 14/83, von Colson and Kamann, [1984] ECR 1891 (from the same day) and ECI, case C-106/89, Marleasing, [1990] ECR I-4135 (= We, 151).
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<tr>
<th>Case</th>
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| European Economic Area I (opinion 1/91)                               | 1991 | - own court system for the European Economic Area incompatible with autonomy and function of the ECJ  
- jurisdiction of the (planned) EEA Court would have conflicted with the court system pursuant to art. 164 EEC Treaty (later: 220 EC Treaty, today: 19(1) EU Treaty) and therefore with the foundations of the Community  
- provisions in the EEA Agreement and in the Founding Treaties of the Communities to be interpreted differently even if identically worded  
- because of different objectives and missing transfer of sovereign rights  
- ECJ has to contribute to the development of Community law with regard to the realisation of the Treaty objectives  
- explicit commitment to a purpose-directed handling of Community law...  
- EEC Treaty as "constitutional charter of a Community based on the rule of law"  
- arguments concern "based on the rule of law" but not "constitutional charter" | [1991] ECR I-6079 HV, 32, 432 |
| Großkrotzenburg thermal power station (case C-431/92)                  | 1995 | - objective effect of directives, which impose unequivocal obligations (here: to assess the effects of certain projects on the environment) | [1995] ECR I-2189 HV, 30                      |
| Alcan (case C-24/95)                                                  | 1997 | - Restricted protection of legitimate expectations in case of illegitimate state aids  
- no protection in case of failure to notify compliant to art. 93 EC Treaty (later: 88 EC Treaty, today: 108 FEU Treaty)  
- national authorities must give effect without discretion if Commission orders recovery | [1997] ECR I-1591 HV, 727                    |
| Inter-Environnement Wallonie case C-129/96                            | 1997 | - precursory effect of directives  
- during implementation period member states must refrain from taking measures liable seriously to compromise the result prescribed⁹ | [1997] ECR I-7411 HV, 196                    |
| in particular: state liability pursuant to Community (Union) law       |      |                                                                                                                                                                                                                             |                                               |
| Francovich (joint cases C-6/90 and 9/90)                              | 1991 | - state liability pursuant to Community law for non-implementation¹⁰ of directives (basic decision)  
- reasoning: inherent in the system of the Treaty ("aus dem Wesen der mit dem EWG-Vertrag geschaffenen Rechtsordnung") - argument of effet utile, reference to the loyalty obligations of the member states  
- 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 provisions of the directive, • causality | [1991] ECR I-5357 We, 162 HV, 188           |
| Brasserie du Pêcheur/Factortame (joint cases C-46/93 and 48/93)        | 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 EC Treaty (later: 220 EC Treaty, today: 19(1) EU Treaty) of ensuring "that ... the law is observed!" ("sichern ... die Wahrung des Rechts")  
- 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  
- liability only in case of a sufficiently serious breach of Community law (this applies from then on also to incorrect implementation of directives)  
- liability also for unlawful legislative acts  
- fault no condition of liability  
- remarks on the extent of reparation | [1996] ECR I-1029 We, 171 HV, 176           |
| Dillenkofer (joint cases C-178/94 a.o.)                               | 1996 | - on the conditions of a sufficiently serious breach and the grant of rights to individuals | [1996] ECR I-4845 HV, 193                      |
| Köbler (case C-224/01)                                                | 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"  
- only financial compensation - revision of the relevant judgement is not required | [2003] ECR I-10239 We, 179 HV, 195           |

⁹ See also ECJ, case C-422/05, airport noise, [2007] ECR I-4749.  
¹⁰ As regards state liability for incorrect implementation of directives see ECJ, case C-392/93, British Telecommunications, [1996] ECR I-1631 (= We, 178).
### Competences

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| **FÉDÉCHAR**  
(case 8/55) | 1956 | • the idea of *implied powers*  
- “... 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.” | [1956] ECR 292  
HV, 133 |
| **AETR/EART**  
(case 22/70) | 1971 | • implied power of the Community to conclude international treaties\(^{11}\)  
- may even arise from acts of secondary law  
• decisions of the ministers to be classified as Council decisions or decisions of the representatives of the governments of the Member states (meeting within the Council) according to the distribution of powers | [1971] ECR 263  
We, 29, 91, 214  
HV, 231, 380 |
| **System of generalized tariff preferences I**  
(case 45/86) | 1987 | • the choice of the legal basis for a measure must be based on objective factors which are amenable to judicial review\(^{12}\)  
• art. 235 EEC Treaty (later: 308 EC Treaty, today: 352 FEU Treaty) is only a subsidiary legal basis | [1987] ECR 1493  
We, 33, 54  
HV, 150 |
| **Immigration policy**  
(V.Rs 281,283-285,287/85) | 1987 | (example for a *purpose-directed handling* of Community law) | [1987] ECR 3203  
HV, 134 |
| **Product Safety Directive**  
(case C-359/92) | 1994 | • the concept of approximation of laws in the internal market pursuant to art. 100a EEC Treaty (later: 95 EC Treaty, today: 114 FEU Treaty) encompasses measures relating to a specific product or class of products and, if necessary, individual measures concerning those products | [1994] ECR I-3681  
HV, 137 |
| **Accession to ECHR**  
(opinion 2/94) | 1996 | • no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms  
- no competence arising from art. 235 EC Treaty (later: 308 EC Treaty, today: 352 FEU Treaty)  
- reasoning: the integration into the institutional system of the ECHR (→ the submission under the jurisdiction of the European Court of Human Rights...) would have fundamental institutional implications for the Union and therefore be of a "constitutional dimension" | [1996] ECR I-1763  
HV, 131 |
| **Airport transit**  
(case C-170/96) | 1998 | • measures under the "Third Pillar" must not encroach upon the powers conferred by the EC Treaty on the Community  
- insofar ECJ has jurisdiction to review pursuant to art. L (later: 46) EU Treaty | [1998] ECR I-2763  
HV, 157 |
| **Tobacco advertising**  
(case C-376/98) | 2000 | • no competence of the Community for a general prohibition of advertising for tobacco products  
- limits of the competence for approximation of laws in the internal market pursuant to art. 100a EC Treaty (later: 95 EC Treaty, today: 114 FEU Treaty) (one of the first cases of a *rigorous review* with regard to Community competences)\(^{13}\) | [2000] ECR I-8419  
We, 40  
HV, 143 |

### Institutions

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| **Roquette Frères / Isoglucose**  
(case 138/79) | 1980 | • due consultation of the European Parliament is an essential formality  
- “essential factor in the *institutional balance* intended by the Treaty”  
- “reflects ... the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly”  
• due consultation implies that the parliament has actually expressed its opinion | [1980] ECR 3333  
HV, 158, 164 |

\(^{13}\) Note, however, the return to a "generous" review with regard to Community competences in the case C-380/03, tobacco advertising II.
Les Verts (case 294/83) 1986 • possibility to bring actions for annulment against measures adopted by the European Parliament (concerning the former art. 173)\textsuperscript{14}
- reasoning: EEC is a community based on the rule of law, inasmuch as neither its member states nor its institutions can avoid judicial review
- EEC Treaty as constitutional charter of the community

Tchernobyl I (case C-70/88) 1990 • European Parliament may bring actions for annulment to safeguard its prerogatives (concerning the former art. 173)\textsuperscript{15}
- reasoning: observance of the institutional balance - other legal remedies may prove to be ineffective or uncertain
- note: in no. 26 f. the Court presents a reasoning which is not legal but purely political and ignores the (then) prevailing law!

System of generalized tariff preferences II (case C-65/93) 1995 • Community institutions - duty of loyal cooperation\textsuperscript{16}
- note the parallel to the principle of loyalty between constitutional bodies ("Organ-treue") in constitutional law
- if the European Parliament fails to comply with it during the consultation procedure, the Council does not need to await its opinion

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| Diamantarbeiders (cases 2 and 3/69) | 1969 | • large concept of charges having equivalent effect to custom duties in art. 12 EEC Treaty (later: 25 EC Treaty, today: 30 FEU Treaty)
- 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. | [1969] ECR 211 CMLRev 1969, 335 |
| Dassonville (case 8/74) | 1974 | • large concept of measures having equivalent effect to quantitative restrictions on imports in art. 30 EEC Treaty (later: 28 EC Treaty, today: 34 FEU Treaty)\textsuperscript{17}
- "all trading rules enacted by member states which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade" | [1974] ECR 837 We, 336 HV, 458 |
| van Binsbergen (case 33/74) | 1974 | • large concept of encroachments on the freedom to provide services: also non-discriminating restrictions (by indistinctly applicable measures)
- all "requirements ... which may prevent or otherwise obstruct the activities of the person providing the service"\textsuperscript{18}
- however, specific requirements having as their purpose the application of (indistinctly applicable) professional rules may be justified by the general good | [1974] ECR 1299 HV, 600 |
| Walrave and Koch (case 36/74) | 1974 | • horizontal effect of the freedom of movement for workers on collective regulations of private persons concerning employment or the provision of services | [1974] ECR 1405 HV, 539 |
| Cassis de Dijon (case 120/78) | 1978 | • 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)\textsuperscript{19}
- this includes non-discriminating restrictions by indistinctly applicable measures
- de facto introduction of the country of origin principle
- however: possible justification by "mandatory requirements" of public interests (⇒ inherent limits - proportionality) | [1979] ECR 649 CMLRev 1979, 494 We, 375 HV, 456 |

\textsuperscript{14} See later (the new wording of) art. 230 sub-sect. 1 EC Treaty, today: 263 sub-sect. 1 FEU Treaty.

\textsuperscript{15} See later (the new wording of) art. 230 sub-sect. 2 EC Treaty, today: 263 sub-sect. 2 FEU Treaty.

\textsuperscript{16} See also ECJ, case 204/86, Greece v. Council, [1988] ECR 5323.

\textsuperscript{17} Note, however, the important corrective reduction of the Dassonville formula in the decision Keck from 1993.

\textsuperscript{18} In particular requirements of permissions which demand special professional qualifications, ECJ, case C-76/90, Säger, [1991] ECR I-4239.

\textsuperscript{19} Confirmed in ECJ, case 178/84, Reinhheitsgebot für Bier (German purity law for beer), [1987] ECR 1227 (= We, 381 = HV, 489). The restriction of the label "beer" to products, which had been brewed in compliance to the traditional purity law, was not justified by mandatory requirements of consumer protection, because regulations on compulsory consumer information were sufficient. The absolute prohibition to sell beers with additives was unproportional and therefore not justified under art. 36 EEC Treaty (later art. 30 EC Treaty, today: 36 FEU Treaty).
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<th>Case</th>
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<tr>
<td>Buy Irish</td>
<td>1982</td>
<td>• art. 30 EEC Treaty (today: 34 FEU Treaty) prohibits the organisation or support of publicity campaigns to promote domestic products by the institutions of the member states</td>
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| SPUC v. Grogan | 1991 | • Medical abortion, performed in accordance with national law, constitutes a service within the meaning of art. 60 EEC Treaty (later: 50 EC Treaty, today: 57 FEU Treaty)  
• information by students associations about possibilities of abortion in other member states is not protected under art. 59 EEC Treaty (later: 49 EC Treaty, today: 56 FEU Treaty) because it constitutes merely a manifestation of freedom of expression |
| Waste shipment | 1992 | • even waste falls within the scope of art. 30 EEC Treaty (today: 34 FEU Treaty) 
- even non-recyclable waste  
• however, restrictions on imports can be justified by imperative requirements of environmental protection 
- reference to the principle of correction at source in environmental law laid down by art. 130r(2) EEC Treaty (later: 174(2) EC Treaty, today: 191(2) FEU Treaty) |
| Keck | 1993 | • corrective reduction of the Dassonville formula: only product-related, not sales-related rules 
- regulations on the general conditions of sale which equally concern the distribution of domestic and foreign products not to be considered as measures having equivalent effect to quantitative restrictions on imports 
- this applies also to regulations concerning shop closing times, ECJ, joint cases C-60/93 and C-258/93 (1994) |
| Gebhard | 1995 | • 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 
• such encroachments are only justified if • they are applied in a non-discriminatory manner; • they are justified by imperative requirements in the general interest; • they are proportionate (suitable and necessary) (so called Gebhard formula) |
| Bosman | 1995 | • freedom of movement for workers of professional football players 
- large concept of encroachment on the freedom granted in art. 48 EEC Treaty (later: 39 EC Treaty, today: 45 FEU Treaty): even non-discriminative restrictions  
- direct horizontal effect of art. 48 EEC Treaty (today: 45 FEU Treaty): applies also to regulations of sport associations for professional football players 
- unjustified encroachment by the transfer rule and the nationality clauses for matches in championships |
| French blockades | 1997 | • 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)  
- dogmatic background: a duty of protection of the member states to ensure the enforcement of the fundamental freedoms 
- the concerned member state must adopt all appropriate measures to guarantee the full scope and effect of Community law, unless it can show that action on its part would have consequences for public order with which it could not cope by using the means at its disposal (!) 
- the member state cannot fulfil its obligations by providing compensation |

20 Note: Given that restrictions by the member states therefore do not fall in the field of application of Community law, legal protection can only be granted by the European Court of Human Rights in Strasbourg. In the similar case Open Door and Dublin Well Woman v. Ireland this court has stated a violation of art. 10 ECHR (ECHR, judgement 29.10.1992).

21 This formula summarizes the conditions for the justification of indirect discriminations and (non-discriminative) restrictions of all economic fundamental freedoms, according to the jurisprudence of the European Court of Justice.

22 Note, however, the corrective reduction in ECJ, case C-190/98, Graf [2000] ECR I-493 (= HV, 550): the effect must not be too uncertain or too indirect to affect the access to the labour market.

23 See also ECJ, case C-112/00, Schmidberger, [2003] ECR I-05659 (= We, 349, 407).
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<th>Subsistence</th>
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<tr>
<td>Centros (C-212/97)</td>
<td>1999</td>
<td>• freedom of establishment guarantees the right to register a branch of a company which has been established in another member state only for the purpose to evade the application of national law and which does not conduct any business in that state but intends to carry on its entire business in the State in which the branch is to be created - ECJ affirms cross-border context and denies abuse of the freedom of establishment - the creditors are sufficiently protected by the circumstance that the company holds itself out as a company governed by the foreign law, cf. ECJ, case C-167/01, Inspire Art</td>
<td>[1999] ECR I-1459 We, 458 HV, 594 We, 462</td>
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<td>Angonese (C-281/98)</td>
<td>2000</td>
<td>• direct horizontal effect of the prohibition of discrimination between workers on grounds of nationality (art. 48(2) EC Treaty, now: 45(2) FEU Treaty) on employers - according to the wording of the judgement, even generally on &quot;private persons&quot; - indirect discriminations may be justified by objective reasons - SCEPTICISM IN LEGAL SCIENCE: this could lead to an erosion of the fundamental right to private autonomy</td>
<td>[2000] ECR I-4139 HV, 541</td>
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<td>Schmidberger (C-112/00)</td>
<td>2003</td>
<td>• fundamental rights as inherent limits to the economic fundamental freedoms - interests must be weighed having regard to all the circumstances of the case in order to achieve a fair balance - note: dogmatically, these remarks are nothing but the formulation of a matter of course, which is self-evident in any legal system based on the fundamental value of the respect of fundamental rights!</td>
<td>[2003] ECR I-5659 We, 349, 467 HV, 527</td>
</tr>
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<td>Omega (Laserdrome) (C-36/02)</td>
<td>2004</td>
<td>• human dignity as limit to the economic fundamental freedoms - as a fundamental right and an important element of public policy, it may justify the prohibition of certain services (in the given case the organizing of killing simulation games with laser pistols) - member states enjoy a margin of discretion with regard to the protection of this interest in their constitution</td>
<td>[2004] ECR I-9609 HV, 316</td>
</tr>
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<td>Laval (C-341/05)</td>
<td>2007</td>
<td>• horizontal effect of the freedom to provide services (art. 49 EC Treaty, today: 56 FEU Treaty) against trade unions: applies also to collective actions24 - consequently, the exercise of an essential fundamental right of the trade unions needs to be justified (!) if it is directed against a foreign service provider</td>
<td>[2007] ECR I-11767</td>
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### Fundamental rights

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<tr>
<td>Stauder (case 29/69)</td>
<td>1969</td>
<td>• Fundamental rights as general principles of Community law25</td>
<td>[1969] ECR 419 We, 65, 184 HV, 301</td>
</tr>
<tr>
<td>Nold (case 4/73)</td>
<td>1974</td>
<td>• the constitutional traditions common to the member states are the basis for the own jurisprudence on fundamental rights - international treaties for the protection of human rights, to which the member states have acceded, can also supply guidelines fundamental rights are protected subject to restrictions in the pursuit of public interests (in particular of the objectives of the Communities)</td>
<td>[1974] ECR 491 We, 65 HV, 303</td>
</tr>
<tr>
<td>Hauer (case 44/79)</td>
<td>1979</td>
<td>• the constitutional traditions common to the member states and the ECHR are the basis for the own jurisprudence on fundamental rights - the right to property and the freedom to pursue trade or profession as fundamental rights26 - they may, however, be restricted with regard to their social function (reasoning about limits based on comparison of law) - the principle of proportionality as limit of limits; absolute protection of the essence of the rights</td>
<td>[1979] ECR 3727 We, 68 HV, 304</td>
</tr>
</tbody>
</table>

24 See also ECI, case C-438/05, Viking.
25 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.
<table>
<thead>
<tr>
<th>Case Study</th>
<th>Year</th>
<th>Key Points</th>
</tr>
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<tbody>
<tr>
<td>Hoechst (joint cases C-46/87, C-227/88)</td>
<td>1989</td>
<td>- Power to search of the Commission in the field of competition law. Depending on special legal bases (in secondary law), duty of assistance of the national authorities. - Commission must respect the relevant procedural guarantees laid down by national law. Courts of the member states may review the measures of constraint envisaged but not the Commission decision ordering the investigation.</td>
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<td>Banana market organisation (case C-280/93)</td>
<td>1994</td>
<td>- The freedom to pursue trade or profession may be restricted extremely. - Often criticised example of the negligent judicial review with regard to the limits of the low practical effectiveness of the fundamental rights in the jurisprudence of the ECJ following from that. - Unbalanced and biased stressing of the “broad discretion” of the Community legislator when encroaching on fundamental rights. - An encroachment on fundamental rights is only illegal, if the measure has been proved to be “manifestly inappropriate” [here in the sense of “unsuitable”].</td>
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<tr>
<td>Directive on biopatents (case C-377/98)</td>
<td>2001</td>
<td>- Human dignity as a fundamental right. - Dogmatics still unclear (in particular: are there limits to human dignity, which may justify encroachment?) - See also ECJ, case C-36/02, Omega (Laserdrome) (human dignity as a limit to the economic fundamental freedoms).</td>
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<tr>
<td>Carpenter (case C-68/00)</td>
<td>2002</td>
<td>- 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. - Consequence: the expulsion of the spouse violates the freedom to provide services of the husband (who must take care of his children...) - Problematic: thus the member states are bound to the freedom of movement of the European Union even beyond the implementation and application of Union law.</td>
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<td>Mangold (case C-144/04)</td>
<td>2005</td>
<td>- Grounds of age already before period for transposition of directive 2000/78/EC expires. - This controversial judgement provoked the appeal of HERZOG/GERKEN to “Stop the European Court of Justice” but has been considered legitimate by the German Bundesverfassungsgericht.</td>
</tr>
<tr>
<td>Kadi/Al Barakaat (joint cases C-402/05 P, C-415/05 P)</td>
<td>2008</td>
<td>- Legal acts of the Community, which implement 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. - Confirmation of the present protection of fundamental rights and explicit and effective application of the right to respect for property, right to be heard and right to effective judicial review.</td>
</tr>
</tbody>
</table>

26 Inventories of the individual fundamental rights, which have been worked out by the ECJ, can be found at Hummer/Simma/Vedder, Europarecht in Fällen, 3rd edition 1999, p. 436 ff; Kingreen, in: Callies/Ruffert (editors), EUVE/EGV, 2nd edition 2002, art. 6 EU Treaty no. 93 ff.  
27 This position has been abandoned in ECJ, case C-94/00, Roquette Frères, [2002] ECR I-9011, no. 29 with regard to the judgement of the ECHR from 16.04.2002 in the case Stës Colas Est and others v. France.  
28 However, see now ECJ, case C-427/06, Bartsch: no general prohibition of discrimination, which would even apply if in a national case no Community law was involved.  
30 Cf. BVerfG, 06.07.2010, 2 BvR 266/06 (Honeywell), www.bundesverfassungsgericht.de/entscheidungen/rs20100706_2vbr266106en.html; see also the dissenting vote of the Justice Landau.
Citizenship of the Union

<table>
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<tr>
<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
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| Baumbast (case C-413/99) | 2002 | • direct applicability of the general freedom of movement and residence (art. 18 EC Treaty, now: 21 FEU Treaty)  
  - limitations and conditions set by secondary law must be applied in compliance with  
    the general principles of Community law, in particular the principle of proportionality | [2002] ECR I-7091          |
| Zhu and Chen (Rs. C-200/02) | 2004 | • freedom of movement and residence of underage children born in the host state who are citizens of the Union but whose parents are not  
  - in the given case: right of residence in the UK of a child, whose mother is Chinese but who has obtained Irish (!) citizenship by being born in Belfast (UK)  
  - to rely on the freedom of movement and residence does not require to move to another member state  
  - to rely on the freedom of movement and residence does not require a certain age  
  - to rely on the freedom of movement and residence does not require own resources if sickness insurance and sufficient resources are provided by the alimenting parent (concerning art. 1(1) of Directive 90/364)  
  - right of residence of the accompanying alimenting parent  
  - a refusal to allow the parent to reside with that child in the host member State would deprive the child's right of residence of any useful effect  
  - right of residence already follows from art. 18 EC Treaty (today: 21 FEU Treaty) | [2004] ECR I-9925          |