Diagram 2

Constitutional jurisprudence in the member states on the participation in the process of European integration

(updated 2009; partly updated and enlarged 2015)

Preliminary remark

This overview presents the jurisprudence of constitutional courts and other courts with constitutional jurisdiction. The selection concentrates on the better known decisions (in particular of the Italian Corte costituzionale, the German Bundesverfassungsgericht and the French Conseil constitutionnel) and on the highly topical Lisbon judgements (of the Conseil constitutionnel, the Czech Ústavní soud, the Latvian Satversmes tiesa, the Bundesverfassungsgericht, the Hungarian Alkotmánybíróság and the Polish Trybunał Konstytucyjny).

However, presentations of less known judgements, in particular from the new member states, are also incorporated.

Note that the constitutional courts of the member states do not have any jurisdiction on questions of European Union law. According to art. 19(1) EU Treaty (formerly: 220 EC Treaty), this jurisdiction is reserved to the European Court of Justice. The jurisdiction of the constitutional courts is limited to questions of constitutional law concerning the participation of their state in the process of European integration.

For example, regarding the question of Union law, a finding of a national constitutional court that in a given case the European Union has acted ultra vires, would be nothing else than a simple expression of opinion.

Corte costituzionale (Italy)

<table>
<thead>
<tr>
<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costa/Enel</td>
<td>1964</td>
<td>• Possibility to sign treaties which involve limitation of sovereignty and</td>
<td>CMLRev 1964, 224 internet4</td>
</tr>
<tr>
<td>(Sent. 14/64)</td>
<td></td>
<td>to make them executory by an ordinary statute</td>
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<td></td>
<td></td>
<td>• A later internal law takes precedence over the Treaty and over any</td>
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<td></td>
<td></td>
<td>rules issued under the Treaty prior to the national law</td>
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</tr>
<tr>
<td>Frontini</td>
<td>1973</td>
<td>• EEC as a new inter-state organization, of a supranational type,</td>
<td>Oppenheimer I, 6295 Europarecht 1974, 255 internet6</td>
</tr>
<tr>
<td>(Sent. 183/73)</td>
<td></td>
<td>permanent, characterized by its own autonomous and independent legal</td>
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<td></td>
<td></td>
<td>order</td>
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<td></td>
<td>• Community law and internal law are autonomous and distinct legal</td>
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<td>systems, albeit coordinated: the Corte costituzionale has no power to</td>
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<td>review the compatibility of individual Community regulations with the</td>
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<td>Italian Constitution</td>
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<td>• If Community acts violated fundamental principles of the constitutional</td>
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<td>order or inalienable rights of the human being, the law authorizing the</td>
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<td>Treaty of Rome would be declared unconstitutional</td>
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<td>- however, a conflict of this kind is unlikely</td>
<td></td>
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<tr>
<td>ICIC</td>
<td>1975</td>
<td>• Primacy [supremacy] of EC law over inconsistent internal legislation,</td>
<td>internet7</td>
</tr>
<tr>
<td>(sent. 232/75)</td>
<td></td>
<td>but ordinary judges don't have the power to declare internal provisions</td>
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<td></td>
<td>inapplicable and are bound to refer the matter to the Corte</td>
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<tr>
<td></td>
<td></td>
<td>costituzionale, which is responsible for declaring the offending provisions</td>
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<tr>
<td></td>
<td></td>
<td>unconstitutional for violation of art. 11 of the Constitution.</td>
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</tbody>
</table>

2 This has already been recognized in the “Solange I” decision of the German Bundesverfassungsgericht from 1974 (BVerfGE 37, 271, p. 278 and 282).
3 Compiled by Giulia Rossolillo, University of Pavia.
4 www.giurcost.org/decisioni/1964/0014s-64.html.
Granital (Sent. 170/84) 1984

- Community law must prevail over both prior and subsequent conflicting national laws, without the need for resort to the constitutional review: the effect of a Community regulation is therefore to prevent an incompatible provision of domestic law from being taken into consideration for the solution of the dispute
- The Corte costituzionale reserves to itself the power:
  1. to pass on the conformity of Community rules with the fundamental principles of the constitutional order and the inalienable rights of the human being (see the decision Frontini)
  2. to pass on the constitutionality of laws intended to impede or prejudice the observance of the Treaty when the system itself or its basic principles are involved.

Oppenheimer I, 643
CMLRev 1984, 760
internet

Beca (Sent. 113/85) 1985

- Primacy of rulings contained in judgments of interpretation given by the Court of Justice

internet

Fragd (Sent. 232/89) 1989

- The Corte costituzionale has the power to test the consistency of individual provisions of Community law with fundamental human rights
- The power of the Court of Justice to limit, under article 177 EEC Treaty (later 234 EC Treaty, now 267 FEU Treaty), the effects of a declaration of invalidity of a regulation, thereby rendering that declaration without effect in the proceedings before the national court making the reference, could violate art. 24 of the Italian Constitution.

Oppenheimer I, 653
internet

Provincia di Bolzano (Sent. 389/89) 1989

- Primacy of rulings contained in judgments relating to infringement proceedings

internet

Regione Umbria (Sent. 384/94) 1994

- The Corte costituzionale can prevent ab initio any risk of non-compliance with Community obligations by the State, declaring unconstitutional a draft regional law.

Oppenheimer II, 366
Internet

Assemblea regionale siciliana (Sent. 94/95) 1995

- The Corte costituzionale can rule on questions of consistency between national and EC law raised via a principaliter proceeding.

internet

Referendum cases (Sent. 31/2000, 41/2000, 353/2000) 2000

- Inadmissibility of a referendum which would abrogate a domestic law provision implementing a Community rule or being already compliant with a directive for which the time for the implementation has not yet expired (violation of the standstill obligation).

internet

**Bundesverfassungsgericht (Germany)** (updated 2015)

<table>
<thead>
<tr>
<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
</tr>
</thead>
</table>
| EEC regulations | 1967 | - no constitutional complaints against EEC regulations  
- because they are no acts of German "public power"  
- EEC regulations as acts of a "supranational" public power  
- the Community as a community sui generis in a process of progressing integration  
- EC Treaty represents "in a sense the constitution of this Community" | BVerfGE 22, 293/15  
HV 16, 44  
internet |

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8. [www.giurcost.org/decisioni/1984/0170s-84.html](http://www.giurcost.org/decisioni/1984/0170s-84.html)
15. BVerfGE 22, 293 = Entscheidungen des Bundesverfassungsgerichts (decisions of the Federal Constitutional Court, official reports), quoted by indicating the volume and the page number, here: 22nd volume, beginning of the quoted decision at page 293.
<table>
<thead>
<tr>
<th>Year</th>
<th>Case</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1971 | Milk powder | • Community law as an independent (distinct) legal order\(^{18}\)  
• obligation of German courts to apply Community law deriving from art. 24(1) [today: 23(1)] Basic Law [= BL]  
  - reasoning: teleological interpretation of art. 24(1): the originally exclusive holder of the sovereign rights must recognize the legal acts of the "zwischenstaatliche Einrichtung" (supranational institution); argument of effet utile: otherwise the subjective rights of the market citizens cannot be realized  
• primacy of Community law - courts of the case have to decide about the inapplicability of colliding national legal norms |
| 1974 | Solange I | • As long as Community law does not include a binding catalogue of fundamental rights decided on by a parliament, which is adequate in comparison with the catalogue contained in the German Basic Law, the Bundesverfassungsgericht will protect the fundamental rights in the Basic law by deciding on the applicability of secondary Community law in the procedure of constitutional review (upon submission by courts)  
  - in the case of a conflict, the Treaty binds the Community to seek a solution which is compatible with the entrenched imperative precepts ["zwingenden Geboten"] of the Basic Law  
• Art. 24(1) BL (now: 23(1) BL) does not empower to a real transfer of sovereign rights but to take back the exclusive claim to power of the state and to open the legal order for the direct validity and applicability of the supranational law  
• Art. 24(1) BL (now: 23(1) BL) does not allow encroachments on the identity of the constitution\(^{19}\) |
| 1981 | Eurocontrol | • Art. 19(4) BL (right to legal protection against acts of public authority) does not apply to acts of supranational institutions ["zwischenstaatliche Einrichtungen"]\(^{21}\)  
  - measures taken by supranational institutions no acts of German "public power"  
  - teleological reasoning based on the objective of art. 24(1) BL: different legal protection in the member states would jeopardize the ability of the supranational institution to fulfil its tasks  
• legal reservation in art. 24(1) BL to be interpreted strictly: no transfer of sovereign rights by statutory instruments (legal ordinances)  
• transfers of sovereign rights as material (substantial) amendments of the constitution  
  - reasoning: every transfer of sovereign rights changes the constitutional system of distribution of powers |
| 1986 | Solange II | • As long as the Communities, in particular the jurisprudence of the ECJ, generally ensure an effective protection of fundamental rights which is to be regarded as substantially equivalent to the level of protection required by the Basic Law as an inalienable minimum, the Bundesverfassungsgericht will no longer exercise its jurisdiction to decide on the applicability of secondary Community law, and submissions by the courts are not admissible\(^{22}\)  
• ECJ as lawful judge (in the sense of art. 101(1) phrase 2 BL)  
• the direct validity of Community law within the state and the primacy of application of Community law follow from the order to apply supranational law [Rechtsanwendungsbefehl], which was given with the law that ratified the EEC Treaty  
  - Art. 24(1) BL (now: 23(1) BL) enables to grant primacy of validity (!) or of application through the order to apply supranational law [Rechtsanwendungsbefehl] |

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18 Confirmed in BVerfGE 37, 271, 277 (Solange I).
19 Confirmed in BVerfGE 58, 1 (Eurocontrol) and BVerfGE 73, 339 (Solange II).
21 See also the differing statement in BVerfGE 89, 155, 175 (Maastricht judgement).
22 See also, as a preparing step for this decision, BVerfGE 52, 187 ("maybe...") from 1979.
<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kloppenburg</td>
<td>1987</td>
<td>The jurisprudence of the ECJ on the direct applicability of directives is an admissible judicial development (not a judicial making) of law.</td>
</tr>
<tr>
<td>Night work</td>
<td>1992</td>
<td>Confirmation of the primacy (of applicability) of Community law.</td>
</tr>
<tr>
<td>Maastricht judgement</td>
<td>1993</td>
<td>The European Union is a &quot;Staatenverbund&quot; [&quot;compound of states&quot; / &quot;association of states&quot;], not a federal state.</td>
</tr>
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<td></td>
<td></td>
<td>Democratic legitimacy is provided primarily by the peoples of the member states through the national parliaments, and only in addition - but more and more - by the European Parliament.</td>
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<td>The democratic bases have to be strengthened in line with the progress of integration.</td>
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<td>No objections against the concentration of competences at the Council as an institution which is controlled by the executive, but there must remain tasks and powers of substantial weight for the German Bundestag.</td>
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<td></td>
<td>Art. 38 BL limits the transfer of competences to the Union and grants the citizen a subjective right to political participation and influence.</td>
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<tr>
<td></td>
<td></td>
<td>The Bundesverfassungsgericht will control if the legal acts of the Union comply with the limits of its competences.</td>
</tr>
</tbody>
</table>

### Notes


24 See also the Czech Ústavní soud in its first Lisbon judgement (p. 16).

25 Explicit divergence from the previous statement in BVerfGE 58, 1, 27 (Eurocontrol).

26 Casebook Weatherill, Cases and Materials on EU Law, 8th edition 2007. Note that the English translation of extracts from the Maastricht judgement contains some mistakes, which, however, could not be avoided, due to the partly "unique" terminology applied by the court.

| Television Directive | 1995 | - The exercise of Germany’s rights as a member state by the Federal Government can be reviewed by the Bundesverfassungsgericht in Federation-Land-Disputes ("Bund-Länder-Streit")
- In the Community institutions, the Federal Government must defend member states’ competences, which within the Federal Republic of Germany are allocated to the Länder, against encroachments of the Community - this obligation derives from the principle of federal loyalty [Bundestreu] - if the Länder and the Federal Government share the opinion that there is no Community competence for a certain act, the Federal Government must oppose this act categorically within the Council |
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<tbody>
<tr>
<td>Allocation of seats in the European Parliament (chamber decision)</td>
<td>1995</td>
<td>- The principle of equal elections does not exclude the current unequal allocation of seats in the European Parliament to the member states (based on ponderation) because it corresponds to the character of the EU as a &quot;Staatenverbund&quot;</td>
</tr>
</tbody>
</table>
| Monetary union | 1998 | - Euro introduction does not violate the right of property
  - the legislative act ratifying the Treaty of Maastricht represents a determination of the content and limits of the right of property in the sense of art. 14(1) phrase 2 BL.
  - economic evaluations and assessments as necessary for the application of the convergence criteria in art. 109 EC Treaty (now: art. 140 FEU Treaty) cannot be judged according to the individualising standards of fundamental rights |
| Banana market organisation | 2000 | - protection of fundamental rights by the Bundesverfassungsgericht only according to the "Solange II" formula
  - disguised correction of the statements in the Maastricht judgment while pretending continuity; the notion of "relationship of cooperation" ("Kooperationsverhältnis") is not applied any more!
  - severe requirements for constitutional complaints and submissions by courts against the application of Community law
  - The Bundesverfassungsgericht requires a thorough comparison of the national and European protection of human rights following the example of its Solange II decision. The appellant or submitting court has to demonstrate that the imperative standards are generally not guaranteed any more in the EU. |
| European arrest warrant | 2005 | - The German legislator has to implement the Framework Decision on the European arrest warrant in such a way that the restriction of the freedom from extradition (art. 16(2) BL) is proportionate. The latitude left by the Framework Decision must be used in a manner that is considerate with the fundamental rights
  - a specific balance of interests is necessary, if the (criminal) act has been committed in Germany but the result has occurred abroad
  - The cooperation practiced in the "Third Pillar" in the shape of limited mutual recognition is a way of preserving national identity and statehood in a single European judicial area, which is considerate in terms of subsidiarity (Article 23(1) BL) |
| Lisbon judgement | 2009 | - a right of the citizen under art. 38(1) BL [right to vote], enforceable by constitutional complaint, that the Bundestag will retain substantial competences in the process of integration, that the Union will be sufficiently democratically legitimised, and that the German statehood and the fundamental constitutional principles will be preserved in the process of integration |

30 See now the regulation in art. 23(4-6) BL (and implementing law).
31 [Www.servat.unibe.ch/law/dfr/bv092203.html](http://www.servat.unibe.ch/law/dfr/bv092203.html)
32 English translation: www.bundesverfassungsgericht.de/entscheidungen/rs19980331_2bvr187797en.html; German version: www.bverfg.de/entscheidungen/rs19980331_2bvr187797.html
33 English translation: www.bundesverfassungsgericht.de/entscheidungen/rs19980331_2bvr187797en.html; German version: [Www.servat.unibe.ch/law/dfr/bv102147.html](http://www.servat.unibe.ch/law/dfr/bv102147.html)
34 See also the decisions of the Polish Trybunał Konstytucyjny of 2005 (see p. 14) and the Czech Ústavní soud of 2006 (see p. 15).
35 English translation: www.bundesverfassungsgericht.de/entscheidungen/rs20050718_2bvr223604en.html; German version: www.bundesverfassungsgericht.de/entscheidungen/rs20050718_2bvr223604.html
36 English translation: www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html; German version: [es20090630_2bve000208.html](http://www.servat.unibe.ch/law/dfr/bv123267.html).
2009

- principle of the openness towards European law ["Grundsatz der Europarechtsfreundlichkeit"]
  - substantiated in a more or less "open" way...

- pivotal importance of the principle of conferral (= principle of specific attribution of powers, art. 5(1, 2) EU Treaty) in the process of supranational integration
  - the consent of the Federal Government to autonomous amendments to the Treaties in the simplified treaty revision procedure or the bridging procedure (in particular under art. 48(6, 7) EU Treaty, 81(3) FEU Treaty) generally requires an approving legislative act pursuant to art. 23(1) phrase 2 BL.
  - the consent of the Federal Government to the use of the flexibility clause, as extended by the Treaty of Lisbon (art. 352 FEU Treaty), also requires an approving legislative act pursuant to art. 23(1) phrase 2 BL.

- Ultra vires review of the Union’s legal acts by the Bundesverfassungsgericht
  - in addition to the review aiming to preserve constitutional identity in the process of integration ("identity review")
  - the Bundesverfassungsgericht will intervene in case of apparent transgressions of the boundaries ["ersichtliche Grenzüberschreitungen"] 1 [16a] (OBJECTION: disregard of the exclusive jurisdiction of the ECJ, which includes the privilege of authoritative misconception [Privileg des autoritativen Irrtums] - no intervention below the threshold of arbitrariness!)13
  - only the Federal Constitutional Court is entitled to intervene (OBJECTION: encroachment on the domestic jurisdiction of the ordinary courts - a constitutional court is not the supreme guardian of the rule of law!)

- Limits to the transfer of competences deriving from the principle of democracy
  - = limits to supranational integration (that can be overcome by the foundation of a European federal state only)
  - member states must retain sufficient room for the political formation of the economic, cultural and social circumstances of life
  - problematic areas: criminal law, deployment of the armed forces; fundamental decisions on public revenue, public expenditure and external financing, essential decisions on social policy, decisions of major cultural significance (as regards language, school and education system, family law, the dealing with religious communities etc.) 38

- democracy of the European Union not to be shaped in analogy to that of a state / Treaty of Lisbon does not create a European people (in the sense of a people of a state)

- the degressively proportional representation in the European Parliament is incompatible with the idea of democratic equality10
  - the principle of electoral equality belongs to the legal principles common to all democratic European states; connection to human dignity
  - due to the deficit, the European Parliament cannot reflect a European majority will that might, for instance, support a European government
  - with relation to the prohibition of discrimination on grounds of nationality, which forms a central idea of European Union law, this represents a discrepancy in valuation

it is, however, acceptable, since the Union is just a compound of states / association of states ["Staatenverbund"] and the European Parliament still represents the peoples of the member states; the "representative democracy" pursuant to art. 10(1) EU Treaty relates to the peoples of the member states (CRITICAL REMARK: the Court does not consider the existence of a European people that is not a people of a state but a people of the Union).

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37 See, however, the correction and concretisation in BVerfG, 06.07.2010, 2 BvR 2661/06 (Honeywell).
38 See for another attitude the second Lisbon judgement of the Czech Ústavní soud (see p. 16).
39 See on this aspect also the Czech Ústavní soud in its second Lisbon judgement (see p. 16).
<table>
<thead>
<tr>
<th>Honeywell</th>
<th>2010</th>
</tr>
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<tbody>
<tr>
<td><strong>Correction and concretisation of a passage in the Lisbon judgement:</strong> Ultra vires review by the Bundesverfassungsgericht can only be considered if a breach of competences on the part of the European bodies is &quot;sufficiently qualified&quot;. This is contingent on the fact that the authority of the European Union being &quot;manifestly&quot; in breach of competences and the impugned act leading to a &quot;structurally significant shift to the detriment of the Member States&quot; in the structure of competences</td>
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</tr>
<tr>
<td>- the Bundesverfassungsgericht must exercise its control powers in a manner that is reserved and open towards European law</td>
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</tr>
<tr>
<td>- note the shift from &quot;apparently&quot; [&quot;ersichtlich&quot;] to &quot;manifestly&quot; [&quot;offensichtlich&quot;] in breach. However, the criterium &quot;manifestly&quot; is not substantiated; instead, the Court refers to heterogeneous formulations in doctrine (CRITICISM: This disguised correction is insufficient, since it does not ensure that the Bundesverfassungsgericht, respecting the exclusive jurisdiction and the privilege of misconception [Privileg des autoritiven Irrtums] of the ECJ, will not intervene, as long as the threshold of an arbitrary excess of powers is not passed!)</td>
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</tr>
<tr>
<td>- Before assuming an ultra vires act, the Bundesverfassungsgericht must obtain a preliminary ruling of the ECJ on those questions, which have arisen and which the ECJ has not yet clarified</td>
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<tr>
<td>- limits to judicial further development of law</td>
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<tr>
<td>- no political latitudes</td>
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<tr>
<td>- a major limit: the principle of conferral (= principle of specific attribution of powers); however, there is no sufficiently qualified breach unless a judicial development of law, which is not justifiable in terms of legal method, has the effect of establishing competences in practice</td>
<td></td>
</tr>
<tr>
<td>- in the Mangold case (C-144/04) the judicial development of law was legitimate</td>
<td></td>
</tr>
<tr>
<td>- protection of legitimate expectations in constellations of retroactive inapplicability of national statutory provisions as a result of ECJ rulings</td>
<td></td>
</tr>
<tr>
<td>- Bundesverfassungsgericht suggests secondary protection of legitimate expectations by compensating for the damage caused by breach of trust</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>euro rescue package</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preservation of the budget autonomy of the Bundestag in the process of integration</strong></td>
<td></td>
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<tr>
<td>- the decision on revenue and expenditure of the public sector must remain permanently in the hand of the Bundestag as a fundamental part of the ability of a constitutional state to democratically shape itself.</td>
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<tr>
<td>- When establishing mechanisms of considerable financial importance which can lead to incalculable burdens, the Bundestag must ensure that later on, mandatory approval by the Bundestag is always obtained again. It is prohibited from establishing permanent mechanisms under the law of international treaties which result in an assumption of liability for other states' decisions.</td>
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<tr>
<td>- Every larger scale aid to other member states provided by the Federation in a spirit of solidarity and involving public expenditure must be specifically approved by the Bundestag. Sufficient parliamentary influence must also be ensured with regard to the manner in which the funds that are made available are dealt with.</td>
<td></td>
</tr>
<tr>
<td>- assumptions of guarantees must not entail that in the case of guarantee events budget autonomy is virtually rendered completely ineffective; margin of appreciation of the legislator with regard to the probability of having to make payments, the sustainability of the federal budget and the economic performance of Germany</td>
<td></td>
</tr>
<tr>
<td>- a right of the citizen under art. 38(1) BL (read together with art. 20(1, 2), 79(3) BL), enforceable by constitutional complaint, that the budget autonomy of the Bundestag will be preserved</td>
<td></td>
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<tr>
<td>- continuation and defending of the often criticised doctrine established in the Maastricht and Lisbon judgements</td>
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</tbody>
</table>

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40 See also the criticism of the Justice Landau in his dissenting opinion, www.bundesverfassungsgericht.de/entscheidungen/rs20100706_2bvr266106en.html, no. 94 (102 ff.).
41 See Diagram 1, p. 8.
42 Denied by Justice Landau in his dissenting opinion, no. 94 (105 ff.).
<table>
<thead>
<tr>
<th>Topic</th>
<th>Year</th>
<th>Description</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Five percent barrier clause for European elections</td>
<td>2011</td>
<td>The five per cent barrier clause in the law governing the elections of the German members of the European Parliament violates the principles of equal suffrage and of equal opportunities of the political parties. - The legislature’s assessment that otherwise the European Parliament’s ability to function would be impaired cannot rely on a sufficient factual basis and does not adequately take account of the European Parliament’s specific working conditions and its functions.</td>
<td>BVerfGE 129, 300 internet</td>
</tr>
<tr>
<td>ESM/Euro Plus Pact</td>
<td>2012</td>
<td>The duty according to art. 23(2) BL to keep the Bundestag informed, comprehensively and at the earliest possible time, in matters concerning the European Union, requires the Bundestag to be informed early and comprehensively enough to be able to concern itself thoroughly with the dossier and to develop an opinion before the Federal Government makes any binding statements. - This duty finds its limits in the principle of separation of powers, which safeguards a core area of the Executive's responsibility including a range of initiative, deliberation and activity</td>
<td>BVerfGE 131, 152 internet</td>
</tr>
<tr>
<td>ESM and Fiscal Pact</td>
<td>2014</td>
<td>Preservation of the budget autonomy of the Bundestag even when participating in the ESM: - confirmation of BVerfGE 129, 124 (Euro rescue package) - Bundestag may not consent to an automatic guarantee or performance which is not subject to strict requirements and whose effects are not limited - Bundestag must have access to the information which it needs to assess the relevant background and consequences of its decisions in the context of the ESM - the legitimising relationship between ESM and Parliament must not be interrupted under any circumstances (legislature is obliged to make arrangements to ensure that Germany meet any capital calls so that it cannot happen that it will be unable to exercise its voting rights) - no definition of any ultimate limit of payment obligations and liability commitments</td>
<td>BVerfGE 135, 317 internet</td>
</tr>
<tr>
<td>OMT reference</td>
<td>2014</td>
<td>Reference for a preliminary ruling of the ECJ on the compliance of the OMT Decision of the Governing Council of the ECB with Primary Union law (here: no lack of competence) - first reference for a preliminary ruling of the ECJ by the Bundesverfassungsgericht - thorough reasoning on the interpretation of Union law</td>
<td>BVerfGE 134, 366 internet</td>
</tr>
</tbody>
</table>


45 Note that the same applies to the three per cent barrier clause, which had been introduced after this decision, see BVerfGE 135, 259 (with dissenting opinion of the Justice Müller, BVerfGE 135, 299).

46 See also the dissenting opinion of the Justices Di Fabio and Mellinghoff, BVerfGE 129, 346.


49 Decision on the merits. English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/03/rs20140318_2bvr139012en.html; German version: /DE/2014/03/rs/20140318_2bvr139012.html.

50 Decision on the merits. English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/03/rs20140318_2bvr139012en.html; German version: /DE/2014/03/rs20140318_2bvr139012.html.

51 Note that the ECJ has not followed this reasoning in its OMT Judgement of 16.06.2015 (ECJ, case 2/14, Gauweiler and others). After its preliminary ruling, the Federal Constitutional Court has not yet taken its final decision in the case.
| ECB Public Sector Purchase Programme | 2014 | • ECB decisions on Public Sector Purchase Programme exceed EU competences (are ultra vires)  
- first case of intervention against decisions of EU institutions by the way of ultra vires review  
• ECI judgement of 11/12/2018 (case C493/17) on its legality is untenable from methodological perspective | Internet 54 |

| **Conseil constitutionnel (France)** |  |
| name | year | substance | reference |
| Maastricht I (92-308 DC) | 1992 | • the principle of national sovereignty (preamble of the Constitution read together with art. 3 of the Declaration of the Rights of Man and the Citizen of 1789) does not preclude membership in supranational organisations; however, obligations jeopardising the "conditions essentielles d'exercice de la souveraineté nationale" require prior revision of the Constitution 55  
- that was the case with the monetary union and the new Community visa policy with majority vote; see now art. 88-2 of the Constitution  
• right to vote and to stand as a candidate at local elections incompatible with art. 3(4) of the Constitution 56  
- because the local representatives form the electorate for the Senate, which participates at the exercise of national sovereignty (see art. 3(1)) but is not elected directly by the people; see now art. 88-3 of the Constitution (which precludes foreign union citizens from the participation in the elections for the Senate)  
• right to vote and to stand as a candidate at elections to the European Parliament not unconstitutional  
- art. 3(4) of the Constitution not relevant because the European Parliament is not part of the institutional system of the French Republic  
• sufficient protection of fundamental rights guaranteed in the Union by art. F(2) EU Treaty (later: art. 6(2), now: 6(3) EU Treaty) | Recueil, p. 55 internet 57 |
| Maastricht II (92-312 DC) | 1992 | • Treaty of Maastricht compatible with the (amended) Constitution  
• no substantial limits to revisions of the Constitution apart from those set in art. 89 (republican form of government)  
• no review of revisions of the Constitution in the procedure according to art. 54 of the Constitution | Recueil, p. 76 internet 58 |
| Maastricht III (92-313 DC) | 1992 | • no constitutional review of statutes adopted by referendum | Recueil, p. 94 internet 59 |
| Treaty of Amsterdam (97-394 DC) | 1997 | • the transfer of competences for measures relating to visas, asylum and the free movement of persons jeopardises "conditions essentielles d'exercice de la souveraineté nationale"  
- therefore, the ratification of the Treaty of Amsterdam required a prior revision of the Constitution | Recueil, p. 344 internet 60 |

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53 English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/01/rs20140114_2bvr272813en.html; German version: /DE/2014/01/rs20140114_2bvr272813; see also the dissenting opinions of the Justices Lübbe-Wolff, BVerfGE 134, 419, and Gerhard, BVerfGE 134, 430.

54 www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rs20200505_2bvr085915.html; English press release at www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-032.html

55 See in this context art. 54 of the French constitution.

56 See also the much stricter view of the German Bundesverfassungsgericht (BVerfGE 83, 37), concerning art. 20(2) phrase 1 and art. 28(1) phrase 2 BL: "People" means only the people of the state; therefore any right of foreigners to vote and to stand as a candidate at local elections is unconstitutional, even if it does not have any impact on national institutions or policies. See now, however, the new regulation in art. 28(1) phrase 3 BL.


| Economie numérique | 2004 | • according to art. 88-1 of the Constitution, the transposition of EC directives is a constitutional demand; exceptions must be decreed explicitly in the Constitution ["disposition expresse contraire"]
• In the absence of such an explicit provision, any control with regard to the limits of competences and the protection of fundamental rights is reserved to the ECJ |
| Treaty establishing a Constitution for Europe | 2004 | • only some provisions transferring competences or modifying the means of exercising them (in particular abandoning unanimity voting) affect the "conditions essentielles d'exercice de la souveraineté nationale"; besides, the exercise of the new rights of the national parliaments requires an amendment of the constitution
• Constitutional Treaty retains the nature of an international treaty
• Charter of Fundamental Rights not contrary to the French Constitution |
| Copyright in the information society | 2006 | • the transposition of EC Directives is a constitutional requirement
  - confirmation in principle of the new line introduced by the decision "économie numérique" (2004-496 DC)
  • it cannot, however, run counter to a rule or principle inherent to the constitutional identity of France, except when the constituting power consents thereto
  - first relativization of the position in the decision "économie numérique"
• in the procedure under art. 61 of the Constitution [preventive constitutional review], the Conseil constitutionnel must ensure the compliance with the requirement under art. 88-1; however, since it must give a ruling before the promulgation of the statute, in the time allotted by art. 61, it cannot request a preliminary ruling from the ECJ and therefore can only find a statutory provision unconstitutional if it is obviously incompatible with the Directive which it is intended to transpose63
  - second relativization of the position in the decision "économie numérique" |
| - (2006-540 DC) | | Recueil, p. 88 internet64 |
| Treaty of Lisbon | 2007 | • no constitutional review of Treaty provisions which merely reiterate undertakings already entered into by France
• in art. 88-1 et seq. of the Constitution, the constituent power recognised the existence of a Community legal order integrated into domestic law and distinct from international law, while confirming the place of the Constitution at the summit of the domestic legal order
• some Treaty clauses (that transfer to the European Union powers concerning the fundamental conditions of the exercising of national sovereignty) and the provisions on the new powers vested in the national parliaments in the framework of the Union require a (preliminary) revision of the Constitution |
| - (2007-560 DC) | | Recueil, S. 459 internet65 |

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<thead>
<tr>
<th>Name</th>
<th>Year</th>
<th>Substance</th>
<th>Reference</th>
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</table>
| Prohibition for debtors to public institutions to leave the country  | 1994 | • the prohibition for debtors to public institutions to leave the country is incompatible with Community law (freedom of movement for workers, freedom of establishment)  
• one-time general recognition of the primacy of Community law  
• has been revoked later by the same Senate                                                                                                      | Dositikiki Diki 1995, 448, Aiki 1995, 937                                                     |
| Recognition of private institutions of higher education              | 1998 | • the recognition of academic study programs, which are partly provided in branches of foreign institutions of higher education in Greece, is incompatible with the prohibition to establish private institutions of higher education under art. 16 of the Constitution  
• according to a dissenting vote, the freedom of movement for workers and the freedom of establishment collide with the Greek Constitution | Nomiko Wima 1999, 1019, To Syntagma 1998, 961                                               |
| Main shareholder                                                     | 2004 | • art. 14(9) of the Constitution (main shareholder of information media enterprise cannot undertake to carry out works or supplies or to provide services under public procurement) has primacy over the relevant provisions in Directive 93/37/EEC  
• a primacy of Community law over the Constitution would amount to deny the power of the constituent to amend the Constitution; art. 28 of the Constitution does not have a higher legal force than other provisions of the Constitution (two dissenting votes) | Internet                                                                                      |
| Legal protection against statutes                                    | 2008 | • Reference to the ECJ for a preliminary ruling on the question whether the restriction of legal protection against statutes caused by the missing option of a non-case related constitutional review of statutes is compatible with Community law  
• higher standards of the right to reflective legal protection in cases where Community law is relevant | Internet                                                                                      |

**Verfassungsgerichtshof (Austria)**

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<tr>
<th>Name</th>
<th>Year</th>
<th>Substance</th>
<th>Reference</th>
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</table>
| Bundesvergabeamt (B320095)                                            | 1995 | • ECJ as lawful judge in the sense of art. 83(2) Federal Constitutional Law                                                                                                                                 | Slg. 14390  
HV, 273  
Internet                                                                                            |
| Higher education entrance qualification (B877/96)                    | 1997 | • primacy of applicability of Community law  
• to be respected also by the Verfassungsgerichtshof                                                                                                                                           | Slg. 14886  
Internet                                                                                            |

**Højesteret (Supreme Court, Denmark)**

<table>
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<tr>
<th>Name</th>
<th>Year</th>
<th>Substance</th>
<th>Reference</th>
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</table>
| Maastricht judgement (1 361/1997)                                     | 1998 | • ratification of the Treaty of Maastricht not unconstitutional  
• acts of secondary law, which exceed the competences of the Union, will not be applied in Denmark  
• all Danish courts entitled to review and reject | EuGRZ 1999, 49  
Internet                                                                                                 |
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<tr>
<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
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| Elections coalitions II (Riigikohus en banc) (3-4-1-1-05) | 2005 | • Primacy [supremacy] of application of European Union Law  
• no competence of the Chancellor of Justice to request that the Riigikohus declare an act unconstitutional for violation of EU law  
- "49. ... Neither the Chancellor of Justice Act nor the Constitutional Review Court Procedure Act give the Chancellor of Justice the competence to request that the Supreme Court declare an Act unconstitutional on the ground that it is in conflict with the European Union law. There are different possibilities for bringing national law in conformity with the European Union law, and neither the Constitution nor the European Union law provide for the existence of constitutional review proceedings for this purpose. The European Union law has indeed supremacy over Estonian law, but taking into account the case-law of the European Court of Justice, this means the supremacy upon application. The supremacy of application means that the national act which is in conflict with the European Union law should be set aside in a concrete dispute ... Pursuant to Article 226 of the Treaty establishing the European Community, the Commission, if it considers that a Member State has failed to fulfill an obligation under this Treaty, including not bringing national law into conformity with the European Union law, may bring the matter before the Court of Justice. This does not mean that such abstract review procedure over national law should exist on the national level. ..."  
• see also dissenting opinion of the JUSTICE AFFRANQUE: The Chancellor of Justice essentially contested the conformity of the Political Parties Act to the Constitution (the substance of which had been renewed by the Amendment Act), and the Riigikohus en banc should have answered this question in the framework of constitutional review, using the help of EU law for interpretation purposes and even asking the ECJ for a preliminary ruling, if necessary. | Riigi Teataja III 2005, 13, 128 internet |
| (continuation Elections coalitions II) | 2005 | - "50. The legislator is competent to decide whether it wants to regulate the procedure for declaring invalid Estonian legislation which is in conflict with the European Union law, just as the legislator is free to choose whether it will or will not give the Chancellor of Justice the right to review the conformity of national legislation with the European Union law."  
• see also dissenting opinion of the JUSTICE AFFRANQUE: The Chancellor of Justice essentially contested the conformity of the Political Parties Act to the Constitution (the substance of which had been renewed by the Amendment Act), and the Riigikohus en banc should have answered this question in the framework of constitutional review, using the help of EU law for interpretation purposes and even asking the ECJ for a preliminary ruling, if necessary. | Riigi Teataja III 2005, 13, 128 internet |
| Opinion on monetary union (Constitutional Review Chamber) (3-4-1-3-06) | 2006 | • Primacy [supremacy] of European Union Law over the Estonian Constitution  
- "14. ... Thus, the Constitution ... must be read together with the Constitution of the Republic of Estonia Amendment Act, applying only the part of the Constitution that is not amended by the CAA. ... 16. ... only that part of the Constitution is applicable, which is in conformity with the European Union law or which regulates the relationships that are not regulated by the European Union law. The effect of those provisions of the Constitution that are not compatible with the European Union law and thus inapplicable, is suspended. This means that within the spheres, which are within the exclusive competence of the European Union or where there is a shared competence with the European Union, the European Union law shall apply in the case of a conflict between Estonian legislation, including the Constitution, with the European Union law."  
• (Union-friendly) interpretation of the Constitution Amendment Act  
• Estonian Constitution allows to participate at the monetary union; competences of the Bank of Estonia will change  
- "18. ... Thus, after the Republic of Estonia has become a full member of the economic and monetary union, the situation will be created where the Eesti Pank may issue euro banknotes with the authorisation of the European Central Bank and euro coins in the volume prescribed by the European Central Bank, whereas the euro shall be the sole legal tender on the territory of the Republic of Estonia. ... the requirements of Article 109 of the Treaty Establishing the European Union are fulfilled, too, as the Constitution of the Republic of Estonia Amendment Act allows to read the Constitution in conformity with the European Union law."  
• See also the dissenting opinions of the JUSTICES KERGANDBERG and KÖVE who criticise that the Riigikohus did not specify the limits of the primacy of EU law over the Estonian Constitution and did not interpret the fundamental principles of the Constitution which are stated in the protective clause (§ 1) of the Constitution Amendment Act. JUSTICE KÖVE is of the opinion that the principle of primacy of EU law has been "overestimated." | Riigi Teataja III 2006, 19, 176 internet |

72 Compiled by Julia Laffranque, University of Tartu.
73 English translation: www.nc.ee/?id=391; original version: www.riigikohus.ee/?id=11&tekst=RK/3-4-1-1-05.
74 English translation: www.nc.ee/?id=663; original version: www.riigikohus.ee/?id=11&tekst=RK/3-4-1-3-06.
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<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
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</table>
| European arrest warrant                     | 2005 | • extradition of Polish citizens on the basis of the European arrest warrant unconstitutional  
- prohibition on extradition in art. 55(1) of the Constitution is absolute in nature  
- for the implementation of the Framework Decision on the European arrest warrant the Constitution has to be amended  
- the Trybunał Konstytucyjny also has to review the constitutionality of normative acts which implement European Union law | OTK ZU 2005, A, No. 4, Pos. 42 internet |
| EU Accession Treaty                         | 2005 | • Primacy of the Constitution over Community law in Poland  
• principle of interpreting the Constitution in a manner "sympathetic to European law" | OTK ZU 2005, A, No. 7, Pos. 81 internet |
| (continuation EU Accession Treaty)          | 2005 | • In case of a irreconcilable inconsistency between the Constitution and Community law, the autonomous decision (revision of the Constitution or secession) belongs to the Polish constitutional legislator  
• EU not a supranational organisation but a special international organisation  
• legal acts exceeding the competences of the Union do not enjoy primacy over national law; final decision lies with the institutions of the member states  
• right to vote and to stand as a candidate at local elections not unconstitutional | internet |
| Lisbon judgement                            | 2010 | • Primacy of the Constitution over Union law in Poland (confirmation)  
• EU membership not a limitation but manifestation of the state's sovereignty; transfers of competences do not lead to permanent limitations of sovereign rights of the states  
- member states maintain the competence of competences  
- preservation of constitutional identity excludes the transfer of the competence to take certain fundamental decisions  
• When transferring competences to the EU, the procedure under art. 90 of the Constitution is essential for the safeguard of sovereignty  
- principle of protection of the state's sovereignty in the process of integration  
- treaties ratified in accordance to art. 90 enjoy a presumption of constitutionality which may be ruled out only if there is no possible interpretation of the treaty or the Constitution allowing to state the conformity  
• art. 48 EU Treaty and 352 FEU Treaty are consistent with the primacy of the Constitution (art. 8(1)) and the integration clause (art. 90(1) of the Constitution)  
• extensive discussion of the relevant jurisprudence of the French, German, Czech, Latvian and Hungarian constitutional courts | internet |

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75 Compiled by Piotr Czarny, University of Cracow.
76 See also the judgements of the German Bundesverfassungsgericht of 2005 (p. 6) and the Czech Ústavní soud of 2006 (p. 15).
77 www.trybunal.gov.pl/Rozprawy/2005/Dz_Ustaw/p_01s05.htm; English translation at www.trybunal.gov.pl/eng/summaries/summaries_assets/P_1_05.htm; German translation at /eng/summaries/documents/P_1_05_DE.pdf.
78 In some member states (Greece, Spain, Poland, Lithuania), the Courts have denied the primacy of European Union law over the national constitution. Thereby, they are challenging a core element of the European legal order. The European Court of Justice has elaborated the primacy of Union law over national constitutional law already in 1970 in the decision Internationale Handelsgesellschaft (case 11/70). The member states have accepted it (in principle) on the occasion of all later reforms and enlargements of the Union. It is a central component of the acquis communautaire, which all member states that acceded later have explicitly accepted.
80 Note that these remarks of the Trybunał Konstytucyjny rest upon a misunderstanding of the term "supranational organisation"; see for the terminology Schmitz, Integration in der Supranationalen Union, 2001, p. 70 ff., 164 ff., English summary at http://lehrstuhl.jura.uni-goettingen.de/schmitz/SupranUnion/SupranUnion_en.htm (chapters 1 and 2).
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<th>Konstitucinis Teismas (Lithuania) 82</th>
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<tr>
<td><strong>name</strong></td>
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<tr>
<td>ownership rights in areas of particular value and in forest land (17/02, 24/02, 06/03, 22/04)</td>
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<td>radio and television funding and radio frequencies (30/03)</td>
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<td>Sabatauskas (47/04)</td>
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<th>Ústavní soud (Czech Republic) 87</th>
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<td><strong>name</strong></td>
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<tr>
<td>sugar quotas (Pl. ÚS 50/04)</td>
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<tr>
<td>European arrest warrant 89 (Pl. ÚS 66/04)</td>
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</tbody>
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82 Note that Lithuania has regulated important aspects of the relation between national law and EU law in the *Constitutional Act on Membership of the Republic of Lithuania in the European Union* of July 13, 2004. According to section 2, EU law shall be a constituent part of the legal system of the Republic of Lithuania. It shall be applied directly and, in the event of collision of legal norms, have primacy over Lithuanian law. The wording of section 2 does not address the problem of primacy over the Lithuanian Constitution.

83 Concerning the incompatibility of this position with European Union law, see footnote 78 (p. 14).


87 Compiled by Harald Christian Schen, Charles University in Prague.


89 See also the judgements of the German Bundesverfassungsgericht (see p. 6) and the Polish Trybunal Konstytucyjny (see p. 14) of 2005.

<table>
<thead>
<tr>
<th>Regulation on the reimbursement of medications (Pl. ÚS 36/05)</th>
<th>2007</th>
<th>• When interpreting art. 36 of the Czech Charter of Fundamental Rights and Basic Freedoms (Listina základních práv a svobod), which guarantees the right to assert one's rights before an independent and impartial court, the Constitutional Court (Ústavní soud) has to take into account the jurisprudence of the European Court of Justice, which has already adjudicated on the interpretation of the procedural standards determined in a EC directive.</th>
</tr>
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</table>
| **Lisbon judgement I** (Pl. ÚS 19/08) | 2008 | • The transfer of powers of bodies of the Czech Republic to an international organisation under art. 10a of the Constitution cannot go so far as to violate the very essence of the republic as a sovereign and democratic state governed by the rule of law. Apart from that, it is solely a question of politics.  
• If, on the basis of a transfer of powers, the "competence of competences" were transferred to an international organisation, i.e. if it could change its powers at will, and independently of its member states, this would violate the essence of the republic as a sovereign and democratic state in the sense of art. 1 of the Constitution.  
The modern concept of sovereignty assumes that state sovereignty is not an aim in and of itself, but is a means for fulfilling the fundamental values of the constitution.  
• For the preventive review of whether an international treaty is consistent with the constitutional order, the appropriate point of reference is the constitutional order as a whole, not only its material core. |
| **Lisbon judgement II** (Pl. ÚS 29/09) | 2009 | • The purpose of the constitutional review of an international treaty is to preventively eliminate inconsistencies between treaty obligations and the constitutional order before the treaty becomes binding. These inconsistencies must be alleged without undue delay. It is contrary to the international public law principle of good faith to disproportionately draw out the definitive decision to accept or not accept the treaty obligation.  
• Under the Czech Constitution, the President of the Republic is obliged to ratify without undue delay an international treaty that was negotiated by the government and the ratification of which has been approved by the democratically elected Parliament. Only a proceeding before the Constitutional Court postpones the moment of ratification until the time of the decision of the Constitutional Court.  
• It is not possible for the Constitutional Court to determine in advance authoritatively a catalogue of non-transferrable powers of the organs of the Czech Republic. These limits should be left primarily to the constitutional legislator to specify.  
• The European Parliament is not the exclusive source of democratic legitimacy for decisions adopted on the level of the European Union. That legitimacy is derived from a combination of structures existing both on the domestic and on the European level. One cannot insist on a requirement of absolute equality among voters in the individual member states. |

92 See also the Maastricht judgement of 1993 of the German Bundesverfassungsgericht (see p. 5).  
94 See for another attitude the Lisbon judgement of the Bundesverfassungsgericht (p. 7).  
95 See on this aspect also the Lisbon judgement of the Bundesverfassungsgericht (p. 7).  
<table>
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<tr>
<th>name</th>
<th>year</th>
<th>substance</th>
<th>reference</th>
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<tbody>
<tr>
<td>Administrative Violation Code</td>
<td>2004</td>
<td>• After joining the European Union, the Republic of Latvia has to honour all the liabilities following from the membership.</td>
<td>internet^99</td>
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<tr>
<td></td>
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<td>• As concerns relations with other member states, EU (Community) norms shall be applied. If international legal liabilities do not conform with the legal norms of the European Communities, the member state shall undertake the necessary measures to eliminate the unconformity. This can also happen by the way of applying the law.</td>
<td></td>
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<tr>
<td>Riga Free Port territory planning</td>
<td>2008</td>
<td>• (In this decision, the Satversmes tiesa has underlined that, with the ratification of the Accession Treaty, EU law has become integral part of Latvian law.)</td>
<td>internet^101</td>
</tr>
<tr>
<td>Lisbon judgement</td>
<td>2009</td>
<td>• The Accession Treaty and subsequent amendments of the Founding Treaties have to be ratified according to the procedure established in art. 68(2) of the Constitution (Satversmes). The implementation of the Accession Treaty and subsequent amendments of the Founding Treaties has become an integral part of Latvian law.</td>
<td>internet^112</td>
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<tr>
<td></td>
<td></td>
<td>• If there has been no request to examine the necessity of a referendum in the course of an abstract control, the citizen is entitled to claim by the way of const. complaint that a referendum has to be performed. Important changes in the conditions of the membership of Latvia in the Union may affect the constitutional foundations of the Republic of Latvia (art. 1, 2, 3, 4, 6 or 77 of the Satversme). In these cases, the procedure under art. 77 and not the procedure under art. 68 of the Satversmes must be applied. Concerning the procedure for the withdrawal from the Union, the Treaty of Lisbon provides for broader guarantees as compared to general international public law. The period of two years for the coming into effect of the withdrawal, as set in art. 50(3) EU Treaty, is proportionate and justified by objective reasons. The European Union cannot be considered as a federal state. The Treaty of Lisbon guarantees the sovereignty of the member states. The European Union represents a new form of legal and political order. The constitutional limits to the transfer of competences arise from the fundamental values of the Latvian State. The right to enter into international engagements is an attribute of State sovereignty. The exercise of the powers is subject to the values of the state set in sovereignty. The transfer of competences to the European Union does not dilute but strengthen the sovereignty of the Latvian people, as long as it is compatible with the values of the Latvian state. Possible decrease of Latvian direct influence in the Union’s institutions should be assessed in the context of increased direct influence. A possible accession of the European Union to the ECHR would not be incompatible with the Satversme.</td>
<td></td>
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</tbody>
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97 Compiled and interpreted by Jānis Pleps, School of Business Administration Turība, doctorand at the University of Latvia. Translated from Latvian to German by Liga Ziedina. See also the original Latvian compilation with detailed literal quotations from the judgements and a summary of the presentation at the Riga Symposium 2009, http://home.lu.lv/~tschmit1/Downloads/BDHK-Simpoziju_11-12-2009_Sprendumi.pdf (p. 13 ff.) and BDHK-Symposium_11-12-2009_Pleps.pdf.

98 Cf. no. 7.


100 See no. 24.2 (“...Eiropas Savienības tiesības ir kļuvisas par neatņemamu Latvijas tiesību sastāvdaļu”). This understanding reflects the strictly monistic perspective of Latvian constitutional law. Note that in most member states, following a dualistic approach, EU law is understood and applied as a separate legal order, coming from outside the national legal order.

Although the dissemination of information on the European integration should be seen as good administration, deficits in the information process do not violate art. 2 of the Satversme [which reserves the sovereign power to the people of Latvia].

The right to initiate the procedure under art. 68(4) Satversmes [the referendum], is an exclusive right of (one-half of) the members of the Saeima.

The Saeima, when deciding on the ratification of an international treaty which modifies the conditions of membership in the European Union, must vet the treaty (and therefore have access to preliminary assessments on the possible implications, made available to its members). The Saeima must also assess which procedure shall be applied for the adoption of the law.

The entering into force of the Treaty of Lisbon does not hinder posterior constitutional review

The European integration clause (art. 2/A of the Constitution) cannot be interpreted in a way that would deprive the clauses on sovereignty and rule of law of their substance

The Treaty of Lisbon does not challenge the independence, sovereignty or rule of law character of the Hungarian state

The transfer of competencies to the EU may not violate “the principles of the form of government”.
- with these is meant primarily the role of the Swedish Riksdag as the foremost representative of the Swedish people
- The protection of fundamental rights in the EU must be equivalent to the level afforded by the ECHR and the Swedish Instrument of Government.
- In case of conflict between the Swedish constitution and EU law there is no issue of supremacy but rather of whether the EU has a properly transferred competence to adopt the norm in question. Should that not be the case, the norm is not valid in Sweden.

Swedish courts have a distinct low profile in EU matters. The constitutional law of the EU membership is predominantly elaborated by the Riksdag (the parliament). The debate in Sweden is primarily concerned with the position of the Riksdag and not with fundamental rights protection.

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Appendix: Opinions on constitutional issues in Sweden

Swedish courts have a distinct low profile in EU matters. The constitutional law of the EU membership is predominantly elaborated by the Riksdag (the parliament). The debate in Sweden is primarily concerned with the position of the Riksdag and not with fundamental rights protection.

The transfer of competencies to the EU may not violate “the principles of the form of government”.
- with these is meant primarily the role of the Swedish Riksdag as the foremost representative of the Swedish people
- The protection of fundamental rights in the EU must be equivalent to the level afforded by the ECHR and the Swedish Instrument of Government.
- In case of conflict between the Swedish constitution and EU law there is no issue of supremacy but rather of whether the EU has a properly transferred competence to adopt the norm in question. Should that not be the case, the norm is not valid in Sweden.
<table>
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<th>Lagrådet (Council on Legislation)</th>
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| (Treaty Establishing a Constitution for Europe) (restated concerning the Treaty of Lisbon) | 2005 | • The "principles of the form of government" also include the fundamental principles of the two constitutional laws the Freedom of the Press Act (Tryckfrihetsförordningen) and the Fundamental Law on Freedom of Expression (Yttrandefrihetsgrundlagen), which are instrumental to securing the free formation of opinion in Sweden. The basic principles of these two laws are the public nature of official documents, the freedom to communicate information for the purpose of publication, the ban on censorship, the protection of sources and the special system of liability.  
• The Constitutional Treaty weakened the role of the Swedish Riksdag but not enough to violate the constitution.  
• The protection of fundamental rights was adequate and even strengthened by the Constitutional Treaty. |

(opinion 28.06.2005, restated 13.06.2008)