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Diagram 2

Constitutional jurisprudence in the member states on the participation in the process of European integration¹

(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.² 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)³			
name	year	substance	reference
Costa/Enel (Sent. 14/64)	1964	<ul style="list-style-type: none"> • Possibility to sign treaties which involve limitation of sovereignty and to make them executory by an ordinary statute • A later internal law takes precedence over the Treaty and over any rules issued under the Treaty prior to the national law 	CMLRev 1964, 224 internet ⁴
Frontini (Sent. 183/73)	1973	<ul style="list-style-type: none"> • EEC as a new <i>inter-state organization, of a supranational type</i>, permanent, characterized by its own autonomous and independent legal order • Community law and internal law are autonomous and distinct legal systems, albeit coordinated: the Corte costituzionale has no power to review the compatibility of individual Community regulations with the Italian Constitution • If Community acts violated fundamental principles of the constitutional order or inalienable rights of the human being, the law authorizing the Treaty of Rome would be declared unconstitutional - however, a conflict of this kind is unlikely 	Oppenheimer I, 629 ⁵ Europarecht 1974, 255 internet ⁶
ICIC (sent. 232/75)	1975	<ul style="list-style-type: none"> • Primacy [supremacy] of EC law over inconsistent internal legislation, but ordinary judges don't have the power to declare internal provisions inapplicable and are bound to refer the matter to the Corte costituzionale, which is responsible for declaring the offending provisions unconstitutional for violation of art. 11 of the Constitution. 	internet ⁷

¹ With contributions from *Thomas Schmitz, Giulia Rossolillo, Giorgos Christonakis, Julia Laffranque, Piotr Czarny, Harald Christian Scheu* and *Ola Zetterquist*. See also the materials from the Riga Symposiums "Verfassungsrechtsprechung zwischen Souveränität und Integration" / "Konstitutionālo tiesu prakse. Ceļā no suverenitātes uz integrāciju", 2007 - 2009, http://home.lu.lv/~tschmit1/Veranstaltungen/Symposium_11.12.2009.htm.

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.

⁵ *Oppenheimer (ed.)*, *The Relationship between European Community Law and National Law: The Cases*, vol. 1, 1994, vol. 2, 2003.

⁶ www.giurcost.org/decisioni/1973/0183s-73.html.

Granital (Sent. 170/84)	1984	<ul style="list-style-type: none"> • 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: <ol style="list-style-type: none"> 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 ⁸
Beca (Sent. 113/85)	1985	<ul style="list-style-type: none"> • Primacy of rulings contained in judgments of interpretation given by the Court of Justice 	internet ⁹
Fragd (Sent. 232/89)	1989	<ul style="list-style-type: none"> • 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 ¹⁰
Provincia di Bolzano (Sent. 389/89)	1989	<ul style="list-style-type: none"> • Primacy of rulings contained in judgments relating to infringement proceedings 	internet ¹¹
Regione Umbria (Sent. 384/94)	1994	<ul style="list-style-type: none"> • 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 ¹²
Assemblea regionale siciliana (Sent. 94/95)	1995	<ul style="list-style-type: none"> • The Corte costituzionale can rule on questions of consistency between national and EC law raised via a principaliter proceeding. 	internet ¹³
Referendum cases (Sent. 31/2000, 41/2000, 353/2000)	2000	<ul style="list-style-type: none"> • 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 ¹⁴
Bundesverfassungsgericht (Germany) (updated 2015)			
name	year	substance	reference
EEC regulations	1967	<ul style="list-style-type: none"> • no constitutional complaints against EEC regulations <ul style="list-style-type: none"> - 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 ¹⁷

⁷ www.giurcost.org/decisioni/1975/0232s-75.html.

⁸ www.giurcost.org/decisioni/1984/0170s-84.html.

⁹ www.giurcost.org/decisioni/1985/0113s-85.html.

¹⁰ www.giurcost.org/decisioni/1989/0232s-89.html.

¹¹ www.giurcost.org/decisioni/1989/0389s-89.html.

¹² www.giurcost.org/decisioni/1994/0384s-94.html.

¹³ www.giurcost.org/decisioni/1995/0094s-95.htm.

¹⁴ www.giurcost.org/decisioni/2000/0031s-00.html, /0041s-00.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.

¹⁶ Casebook *Hummer/Vedder*, Europarecht in Fällen, 4th edition 2005.

Milk powder	1971	<ul style="list-style-type: none"> • Community law as an independent (distinct) legal order¹⁸ • obligation of German courts to apply Community law deriving from art. 24(1) [today: 23(1)] Basic Law [= BL] <ul style="list-style-type: none"> - 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 	BVerfGE 31, 145 HV, 42
Solange I	1974	<ul style="list-style-type: none"> • <i>As long as</i> 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) <ul style="list-style-type: none"> - 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 constitution¹⁹ 	BVerfGE 37,271 (277 ff.) HV, 45 internet ²⁰
Eurocontrol	1981	<ul style="list-style-type: none"> • Art. 19(4) BL (right to legal protection against acts of public authority) does not apply to acts of supranational institutions ["zwischenstaatliche Einrichtungen"]²¹ <ul style="list-style-type: none"> - 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 <ul style="list-style-type: none"> - reasoning: every transfer of sovereign rights changes the constitutional system of distribution of powers 	BVerfGE 58, 1 HV, 50
Solange II	1986	<ul style="list-style-type: none"> • <i>As long as</i> 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 admissible²² • 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 <i>order to apply supranational law [Rechtsanwendungsbefehl]</i>, which was given with the law that ratified the EEC Treaty <ul style="list-style-type: none"> - 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] 	BVerfGE 73, 339 (366 ff.) HV, 52 internet ²³

¹⁷ www.servat.unibe.ch/law/dfr/bv022293.html.

¹⁸ Confirmed in BVerfGE 37, 271, 277 (Solange I).

¹⁹ Confirmed in BVerfGE 58, 1 (Eurocontrol) and BVerfGE 73, 339 (Solange II).

²⁰ English translation: www.utexas.edu/law/academics/centers/transnational/work_new/german/case.php?id=588; German version: www.servat.unibe.ch/law/dfr/bv037271.html.

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.

Kloppenburg	1987	<ul style="list-style-type: none"> • The jurisprudence of the ECJ on the direct applicability of directives is an admissible judicial development (not a judicial making) of law 	BVerfGE 75, 223 HV, 18
Tobacco Labeling Directive (chamber decision)	1989	<ul style="list-style-type: none"> • no constitutional complaints against the cooperation of the Federal Government in the making of secondary Community law <ul style="list-style-type: none"> - because this is not an exercise of public power with respect to the citizen - However, the legislator is bound when transposing directives, within the remaining latitudes. Constitutional complaints can be directed against the transposing statutes 	EuR 1989, 270 HV, 61
Night work	1992	<ul style="list-style-type: none"> • confirmation of the primacy (of applicability) of Community law 	BVerfGE 85, 191 HV, 62
Maastricht judgement	1993	<ul style="list-style-type: none"> • the European Union is a "<i>Staatenverbund</i>" ["<i>compound of states</i>" / "<i>association of states</i>"], not a federal state <ul style="list-style-type: none"> - the member states as "masters of the treaties"; the Union does not have the competence of competences [Kompetenz-Kompetenz] • the principle of democracy is not an obstacle to the membership in a supranational community but requires its democratic legitimation <ul style="list-style-type: none"> - democratic legitimation 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 - the democratic bases have to be strengthened inline with the progress of integration - 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: • art. 38 BL limits the transfer of competences to the Union and grants the citizen a subjective right to political participation and influence <ul style="list-style-type: none"> - no general or indeterminate empowerment, no transfer of the competence of competences²⁴ - the citizen can claim his right to political participation and influence by the way of constitutional complaint • the Bundesverfassungsgericht will control if the legal acts of the Union comply with the limits of its competences²⁵ <ul style="list-style-type: none"> - the founding treaties differentiate between treaty interpretation and treaty extension - following this statement some legal scientists tried to develop a legal concept of "breaking out" ultra virus acts ["ausbrechende Rechtsakte"] • fundamental rights to be protected in a "relationship of cooperation" ["Kooperationsverhältnis"] between the Bundesverfassungsgericht and the ECJ²⁶ <ul style="list-style-type: none"> - the protection of fundamental rights in Germany by the Bundesverfassungsgericht is not limited to violations by German institutions²⁷ - the ECJ provides for protection in the individual case, the Bundesverfassungsgericht confines itself to generally guarantee the imperative (absolute, indispensable) standards - this passage caused a flood of literature on the possible organisation of the "relationship of cooperation" 	BVerfGE 89, 155 HV, 64 Weatherill ²⁸ , 662 internet ²⁹

²³ English translation: www.utexas.edu/law/academics/centers/transnational/work_new/german/case.php?id=572; German version: www.oefre.unibe.ch/law/dfr/bv073339.html.

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

²⁵ See also, as a preparing step for this decision, BVerfGE 68, 1, 98 f. (Pershing missiles) from 1984: Substantial modifications of the integration program and its execution, as laid down in the founding treaty, are not any more covered by the ratifying legislative act.

²⁶ This idea has been given up de facto in the decision BVerfGE 102, 147 (banana market order).

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

²⁸ 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.

²⁹ www.servat.unibe.ch/law/dfr/bv089155.html.

Television Directive	1995	<ul style="list-style-type: none"> • The exercise of Germany's rights as a member state by the Federal Government can be reviewed by the Bundesverfassungsgericht in Federation-Land-Disputes ["Bundes-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 Lander, against encroachments of the Community³⁰ <ul style="list-style-type: none"> - this obligation derives from the principle of federal loyalty [Bundestreue] - if the Lander 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 	BVerfGE 92, 203 HV, 94 internet ³¹
Allocation of seats in the European Parliament (chamber decision)	1995	<ul style="list-style-type: none"> • 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 "Staatenverbund" 	NJW 1995, 2216 HV, 83
Monetary union	1998	<ul style="list-style-type: none"> • Euro introduction does not violate the right of property <ul style="list-style-type: none"> - 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 	BVerfGE 97, 350 HV, 83 internet ³²
Banana market organisation	2000	<ul style="list-style-type: none"> • protection of fundamental rights by the Bundesverfassungsgericht only according to the "Solange II" formula <ul style="list-style-type: none"> - disguised <i>correction of the statements in the Maastricht judgment</i> 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 <ul style="list-style-type: none"> - 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 <i>generally</i> not guaranteed any more in the EU. 	BVerfGE 102, 147 HV, 93 Weatherill, 665 internet ³³
European arrest warrant ³⁴	2005	<ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> - 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) 	BVerfGE 113, 273 internet ³⁵
Lisbon judgement	2009	<ul style="list-style-type: none"> • 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 	BVerfGE 123, 267 NJW 2009, 2267 internet ³⁶ →

³⁰ See now the regulation in art. 23(4-6) BL (and implementing law).

³¹ 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.

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://es20090630_2bve000208.html), www.servat.unibe.ch/dfr/bv123267.html.

<p>(continuation Lisbon judgement)</p>	<p>2009</p>	<ul style="list-style-type: none"> • principle of the openness towards European law ["Grundsatz der Europarechtsfreundlichkeit"] <ul style="list-style-type: none"> - 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 <ul style="list-style-type: none"> - 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 • <i>Ultra vires</i> review of the Union's legal acts by the Bundesverfassungsgericht <ul style="list-style-type: none"> - 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!)³⁷ - 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 <ul style="list-style-type: none"> - = 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 equality³⁹ <ul style="list-style-type: none"> - 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 <p>it is, however, acceptable, since the Union is just a compound of states / association of states ["<i>Staatenverbund</i>"] 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)</p>	
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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).

<p>Honeywell</p>	<p>2010</p>	<ul style="list-style-type: none"> • <i>correction and concretisation of a passage in the Lisbon judgement:</i> Ultra vires review by the Bundesverfassungsgericht can only be considered if a breach of competences on the part of the European bodies is "<i>sufficiently qualified</i>". This is contingent on the act of the authority of the European Union being "<i>manifestly</i>" in breach of competences and the impugned act leading to a "<i>structurally significant shift to the detriment of the Member States</i>"⁴⁰ in the structure of competences <ul style="list-style-type: none"> - the Bundesverfassungsgericht must exercise its control powers in a manner that is reserved and open towards European law - note the shift from "apparently" ["ersichtlich"] to "manifestly" ["offensichtlich"] in breach. However, the criterium "manifestly" is not substantiated; instead, the Court refers to heterogeneous formulations in doctrine (CRITISICM: This disguised correction is insufficient, since it does not ensure that the Bundesverfassungsgericht, respecting the exclusive jurisdiction and the privilege of misconception [Privileg des autoritativen Irrtums] of the ECJ, will not intervene, as long as the threshold of an arbitrary excess of powers is not passed!) • 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 • limits to judicial further development of law <ul style="list-style-type: none"> - no political latitudes - 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 - in the Mangold case (C-144/04)⁴¹ the judicial development of law was legitimate⁴² • protection of legitimate expectations in constellations of retroactive inapplicability of national statutory provisions as a result of ECJ rulings <ul style="list-style-type: none"> - Bundesverfassungsgericht suggests secondary protection of legitimate expectations by compensating for the damage caused by breach of trust 	<p>BVerfGE 126, 286 NJW 2010, 3422 Internet⁴³</p>
<p>euro rescue package</p>	<p>2011</p>	<ul style="list-style-type: none"> • preservation of the budget autonomy of the Bundestag in the process of integration <ul style="list-style-type: none"> - the decision on revenue and expenditure of the public sector must remain permanently in the hand of the Bundestag as a <i>fundamental part of the ability of a constitutional state to democratically shape itself</i>. - 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. - Every larger scale <i>aid</i> to other member states provided by the Federation <i>in a spirit of solidarity</i> and involving public expenditure <i>must be specifically approved</i> 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. - 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 • 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 <ul style="list-style-type: none"> - continuation and defending of the often criticised doctrine established in the Maastricht and Lisbon judgements 	<p>BVerfGE 129, 124 internet⁴⁴</p>

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.).

⁴³ English translation: www.bundesverfassungsgericht.de/entscheidungen/rs20100706_2bvr266106en.html; German version: [/rs20100706_2bvr266106.html](http://www.servat.unibe.ch/dfr/bv126286.html), www.servat.unibe.ch/dfr/bv126286.html.

Five percent barrier clause for European elections	2011	<ul style="list-style-type: none"> • The five per cent barrier clause⁴⁵ 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 <ul style="list-style-type: none"> - 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. 	BVerfGE 129, 300 ⁴⁶ internet ⁴⁷
ESM/Euro Plus Pact	2012	<ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> - 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 	BVerfGE 131, 152 internet ⁴⁸
ESM and Fiscal Pact	2014 2012 ⁴⁹	<ul style="list-style-type: none"> • preservation of the budget autonomy of the Bundestag even when participating in the ESM <ul style="list-style-type: none"> - 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 	BVerfGE 135, 317 internet ⁵⁰ BVerfGE 132, 195 internet ⁵¹
OMT reference	2014	<ul style="list-style-type: none"> • 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) <ul style="list-style-type: none"> - first reference for a preliminary ruling of the ECJ by the Bundesverfassungsgericht - thorough reasoning on the interpretation of Union law⁵² • Citizen has the option to <i>initiate an ultra vires review</i> by the Bundesverfassungsgericht <i>in the way of a constitutional complaint</i> based on art. 38(1) BL <ul style="list-style-type: none"> - see the criticism by Justice GERHARD: constitutional complaint degenerates to an actio popularis • <i>Ultra vires review</i> by the Bundesverfassungsgericht <i>applying the criteria developed in the Honeywell decision</i> <ul style="list-style-type: none"> - OMT Decision [possibly] "manifestly" in breach of competences and leading to a "structurally significant shift" to the detriment of the member States - if the case may be, the Bundestag and the Federal Government must - if it is not feasible or wanted to retroactively legitimise the assumption of powers by changing primary law - pursue the reversal of the decision and take adequate precautions to ensure that the domestic effects remain as limited as possible. 	BVerfGE 134, 366 internet ⁵³

⁴⁴ English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2011/09/rs20110907_2bvr098710en.html; German version: DE/2011/09/rs20110907_2bvr098710.html, www.servat.unibe.ch/dfr/bv129124.html.

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.

⁴⁷ www.bundesverfassungsgericht.de/entscheidungen/cs20111109_2bvc000410.html; English press release: pressemitteilungen/bvg11-070en.html.

⁴⁸ English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2012/06/es20120619_2bve000411en.html; German version: DE/2012/06/es20120619_2bve000411.html, www.servat.unibe.ch/dfr/bv131152.html.

⁴⁹ Presentation following the decision of 2014 on the merits. The essential considerations have been developed already in the thorough "summary review" in the decision of 2012 on the applications for the issue of a temporary injunction.

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 Decision on the applications for the issue of a temporary injunction. English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2012/09/rs20120912_2bvr139012en.html; German version: DE/2012/09/rs20120912_2bvr139012.html, www.servat.unibe.ch/dfr/bv132195.html.

⁵² 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.

<p>ECB Public Sector Purchase Programme Judgement of 05/03/2020, 2 BvR 859/15 a.o.)</p>	2014	<ul style="list-style-type: none"> • ECB decisions on Public Sector Purchase Programme exceed EU competences (are <i>ultra vires</i>) <ul style="list-style-type: none"> - first case of intervention against decisions of EU institutions by the way of <i>ultra vires review</i> • ECJ 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
<p>Maastricht I (92-308 DC)</p>	1992	<ul style="list-style-type: none"> • the <i>principle of national sovereignty</i> (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 Constitution⁵⁵ <ul style="list-style-type: none"> - 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 Constitution⁵⁶ <ul style="list-style-type: none"> - 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 <ul style="list-style-type: none"> - 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
<p>Maastricht II (92-312 DC)</p>	1992	<ul style="list-style-type: none"> • 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
<p>Maastricht III (92-313 DC)</p>	1992	<ul style="list-style-type: none"> • no constitutional review of statutes adopted by referendum 	Recueil, p. 94 internet ⁵⁹
<p>Treaty of Amsterdam (97-394 DC)</p>	1997	<ul style="list-style-type: none"> • 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" <ul style="list-style-type: none"> - therefore, the ratification of the Treaty of Amsterdam required a prior revision of the Constitution 	Recueil, p. 344 internet ⁶⁰

⁵³ English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/01/rs20140114_2bvr272813en.html; German version: [/DE/2014/01/rs20140114_2bvr272813](http://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.

⁵⁷ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1992/92-308-dc/decision-n-92-308-dc-du-09-avril-1992.8798.html (with English and German translation).

⁵⁸ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1992/92-312-dc/decision-n-92-312-dc-du-02-septembre-1992.8800.html (with English and German translation).

⁵⁹ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1992/92-313-dc/decision-n-92-313-dc-du-23-septembre-1992.8822.html (with German translation).

⁶⁰ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/1997/97-394-dc/decision-n-97-394-dc-du-31-decembre-1997.11129.html (with English translation).

<p>Economie numérique (2004-496 DC)</p>	<p>2004</p>	<ul style="list-style-type: none"> • according to art. 88-1 of the Constitution, the <i>transposition of EC directives is a constitutional demand</i>; 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 	<p>Recueil, p. 101 internet⁶¹</p>
<p>Treaty establishing a Constitution for Europe (2004-505 DC)</p>	<p>2004</p>	<ul style="list-style-type: none"> • 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 	<p>Recueil, p. 173 internet⁶²</p>
<p>Copyright in the information society (2006-540 DC)</p>	<p>2006</p>	<ul style="list-style-type: none"> • 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 <i>constitutional identity of France</i>, 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 [<i>preventive constitutional review</i>], 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 <i>only</i> find a statutory provision unconstitutional if it is <i>obviously incompatible</i> with the Directive which it is intended to transpose⁶³ - second relativization of the position in the decision "économie numérique" 	<p>Recueil, p. 88 internet⁶⁴</p>
<p>Treaty of Lisbon (2007-560 DC)</p>	<p>2007</p>	<ul style="list-style-type: none"> • 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 	<p>Recueil, S. 459 internet⁶⁵</p>

⁶¹ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/2004/2004-496-dc/decision-n-2004-496-dc-du-10-juin-2004.901.html; see for a synoptic presentation of the French version and the German translation www.rewi.hu-berlin.de/WHI/papers/whipapers0105/ccverfvde-fr.pdf.

⁶² www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/2004/2004-505-dc/decision-n-2004-505-dc-du-19-novembre-2004.888.html (with English, Spanish and German translation).

⁶³ Confirmed in: Conseil constitutionnel, 12.05.2010, 2010-605 DC, , www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2010/2010-605-dc/decision-n-2010-605-dc-du-12-mai-2010.48186.html (concerning online betting and gambling).

⁶⁴ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/2006/2006-540-dc/decision-n-2006-540-dc-du-27-juillet-2006.1011.html (with English and German translation).

⁶⁵ www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/depuis-1958/decisions-par-date/2007/2007-560-dc/decision-n-2007-560-dc-du-20-decembre-2007.1166.html (with English, Spanish and German translation).

Συμβούλιο της Επικρατείας (Council of State, Greece)⁶⁶			
name	year	substance	reference
prohibition for debtors to public institutions to leave the country (3502/1994, 4th Senate)	1994	<ul style="list-style-type: none"> the prohibition for debtors to public institutions to leave the country is incompatible with Community law (freedom of movement for workers, freedom of establishment) - onetime general recognition of the primacy of Community law - has been revoked later by the same Senate 	Dioikitiki Diki 1995, 448, Δικι 1995, 937 internet ⁶⁷
recognition of private institutions of higher education (3457/1998, en banc)	1998	<ul style="list-style-type: none"> 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 internet ⁶⁷
main shareholder (3242/2004, 4th Senate)	2004	<ul style="list-style-type: none"> 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)⁶⁸ 	internet ⁶⁷
legal protection against statutes (391/2008, 5th Senate)	2008	<ul style="list-style-type: none"> 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 reffective legal protection in cases where Community law is relevant 	internet ⁶⁷
Verfassungsgerichtshof (Austria)			
name	year	substance	reference
Bundesvergabeamt (B2300/95)	1995	<ul style="list-style-type: none"> ECJ as lawful judge in the sense of art. 83(2) Federal Constitutional Law 	Slg. 14390 HV, 273 internet ⁶⁹
Higher education entrance qualification (B877/96)	1997	<ul style="list-style-type: none"> primacy of applicability of Community law⁷⁰ - to be respected also by the Verfassungsgerichtshof 	Slg. 14886 internet ⁶⁹
Højesteret (Supreme Court, Denmark)			
name	year	substance	reference
Maastricht judgement (I 361/1997)	1998	<ul style="list-style-type: none"> 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 ⁷¹

⁶⁶ Compiled by *Giorgos Christonakis*, Athens.

⁶⁷ Look at <http://lawdb.intrasoftnet.com>.

⁶⁸ Concerning the incompatibility of this position with European Union law, see footnote 78 (p. 14). In contrast, the lower ordinary and administrative courts have pronounced themselves frequently and in various case configurations in favour of the primacy of Community law over constitutional law.

⁶⁹ See www.ris.bka.gv.at/vfgh.

⁷⁰ See also *Österreichischer Verfassungsgerichtshof*, cases G2/97 (Slg. 15215), G24/01 a.o. (Slg. 16293) and G121/03 a.o., concerning the constitutional review of unapplicable statutes and ordinances.

⁷¹ www.eu-oplysningen.dk/dokumenter/traktat/amsterdam/smaatryk/bilag/grundlov.

Riigikohus (State Court, Estonia) ⁷²			
name	year	substance	reference
<p>Elections coalitions II (Riigikohus en banc) (3-4-1-1-05)</p>	2005	<ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> - "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 fulfil 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. ..." 	<p>Riigi Teataja III 2005, 13, 128 internet⁷³</p>
<p>(continuation Elections coalitions II)</p> <p>dissenting opinion LAFFRANQUE A.O.</p>	2005	<ul style="list-style-type: none"> - "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 <i>dissenting opinion of the JUSTICE LAFFRANQUE</i>: 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. 	
<p>Opinion on monetary union (Constitutional Review Chamber) (3-4-1-3-06)</p> <p>dissenting opinions KERGANDBERG and KÖVE</p>	2006	<ul style="list-style-type: none"> • Primacy [supremacy] of European Union Law over the Estonian Constitution <ul style="list-style-type: none"> - "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 <ul style="list-style-type: none"> - "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 <i>dissenting opinions of the JUSTICES KERGANDBERG and KÖVE</i> 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". 	<p>Riigi Teataja III 2006, 19, 176 internet⁷⁴</p>

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.

Trybunał Konstytucyjny (Poland)⁷⁵			
name	year	substance	reference
European arrest warrant ⁷⁶ (P 1/05)	2005	<ul style="list-style-type: none"> • 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 ⁷⁷
EU Accession Treaty (K18/04)	2005	<ul style="list-style-type: none"> • Primacy of the Constitution over Community law in Poland⁷⁸ • principle of interpreting the Constitution in a manner "sympathetic to European law" 	OTK ZU 2005, A, No. 7, Pos. 81 internet ⁷⁹ →
(continuation EU Accession Treaty)	2005	<ul style="list-style-type: none"> • 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 organisation⁸⁰ • 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 	
Lisbon judgement (K 32/09)p	2010	<ul style="list-style-type: none"> • 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 <i>constitutional identity</i> 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 - <i>principle of protection of the state's sovereignty</i> 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 ⁸¹

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](http://www.trybunal.gov.pl/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.

⁷⁹ www.trybunal.gov.pl/Rozprawy/2005/Dz_Ustaw/k_18s04.htm; English translation at www.trybunal.gov.pl/eng/summaries/documents/K_18_04_GB.pdf; German translation at [eng/summaries/documents/K_18_04_DE.pdf](http://www.trybunal.gov.pl/eng/summaries/documents/K_18_04_DE.pdf).

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/tschmitz/SupranUnion/SupranUnion_en.htm (chapters 1 and 2).

Konstitucinis Teismas (Lithuania) ⁸²			
name	year	substance	reference
ownership rights in areas of particular value and in forest land (17/02, 24/02, 06/03, 22/04))	2006	<ul style="list-style-type: none"> • primacy of application of European Union law over national law, <i>save the Constitution</i>⁸³ 	internet ⁸⁴
radio and television funding and radio frequencies (30/03)	2006	<ul style="list-style-type: none"> • The jurisprudence of the European Court of Justice, as a source of legal interpretation, is important for the interpretation and application of Lithuanian law. • no primacy of European Union law over the Constitution 	internet ⁸⁵
Sabatauskas (47/04)	2007	<ul style="list-style-type: none"> • reference to the ECJ for a preliminary ruling (case C-239/07, concerning Directive 2003/54) 	internet ⁸⁶
Ústavní soud (Czech Republic) ⁸⁷			
name	year	substance	reference
sugar quotas (Pl. ÚS 50/04)	2006	<ul style="list-style-type: none"> • As a result of the Czech Republic's accession to the European Union, a transfer of powers of national organs to the organs of the European Community was effected. This delegation is conditional and may persist only so long as these powers are exercised in a manner that is compatible with the preservation of the foundations of state sovereignty of the Czech Republic, and in a manner which does not threaten the very essence of a state governed in a broad, substantive sense by the rule of law ["materieller Rechtsstaat"]. • Direct applicability in national law and applicational precedence of Community law follows from Community law doctrine itself, as it has emerged from the case-law of the ECJ. • Art. 10a of the Constitution operates in both directions: It forms the normative basis for the transfer of powers to the Community and simultaneously opens up the national legal order to the operation of Community law, including rules relating to its effects within the legal order. 	internet ⁸⁸
European arrest warrant ⁸⁹ (Pl. ÚS 66/04)	2006	<ul style="list-style-type: none"> • Domestic legal enactments, including the constitution, should be interpreted in conformity with the principles of European integration and the cooperation between Community and member state organs (Euro-conforming interpretation / interpretation in the light of European law). • If the national methodology for the interpretation of constitutional law does not enable a relevant norm to be interpreted in harmony with European Law, it is solely within the Constituent Assembly's prerogative to amend the Constitution. 	internet ⁹⁰

⁸¹ www.trybunal.gov.pl/Rozprawy/2010/Dz_Ustaw/k_32s09.htm; English translation at www.trybunal.gov.pl/eng/summaries/documents/K_32_09_EN.pdf. See also the dissenting opinion to the statement of reasons of Justice *Miroslaw Granat*.

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).

⁸⁴ English translation at www.lrkt.lt/dokumentai/2006/r060314.htm.

⁸⁵ English translation at www.lrkt.lt/dokumentai/2006/r061221.htm.

⁸⁶ English translation at www.lrkt.lt/dokumentai/2007/d070508.htm.

⁸⁷ Compiled by *Harald Christian Scheu*, Charles University in Prague.

⁸⁸ English translation at www.concourt.cz/file/2274.

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

⁹⁰ English translation at www.concourt.cz/file/2276.

<p>Regulation on the reimbursement of medications (Pl. ÚS 36/05)</p>	<p>2007</p>	<ul style="list-style-type: none"> • 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. 	<p>internet⁹¹</p>
<p>Lisbon judgement I (Pl. ÚS 19/08)</p>	<p>2008</p>	<ul style="list-style-type: none"> • 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.⁹² <p>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.</p> <ul style="list-style-type: none"> • 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. 	<p>internet⁹³</p>
<p>Lisbon judgement II (Pl. ÚS 29/09)</p>	<p>2009</p>	<ul style="list-style-type: none"> • 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.⁹⁴ • 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.⁹⁵ 	<p>internet⁹⁶</p>

⁹¹ English translation at www.concourt.cz/file/2294.

⁹² See also the Maastricht judgement of 1993 of the German *Bundesverfassungsgericht* (see p. 5).

⁹³ English translation at http://angl.concourt.cz/angl_verze/doc/pl-19-08.php.

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).

⁹⁶ English press release at www.concourt.cz/view/2144.

Satversmes tiesa (Latvia)⁹⁷			
name	year	substance	reference
Administrative Violation Code (2004-01-06)	2004	<ul style="list-style-type: none"> • After joining the European Union, the Republic of Latvia has to honour all the liabilities following from the membership. • 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.⁹⁸ 	internet ⁹⁹
Riga Free Port territory planning (2007-11-03)	2008	<ul style="list-style-type: none"> • (In this decision, the Satversmes tiesa has underlined that, with the ratification of the Accession Treaty, <i>EU law</i> has become <i>integral part of Latvian law</i>.¹⁰⁰) 	internet ¹⁰¹
Lisbon judgement (2008-35-01)	2009	<ul style="list-style-type: none"> • 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).¹⁰² • 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.¹⁰³ • 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.¹⁰⁴ • 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.¹⁰⁵ • 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.¹⁰⁶ • The constitutional limits to the transfer of competences arise from the fundamental values of the Latvian State.¹⁰⁷ • 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.¹⁰⁸ • 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.¹⁰⁹ Possible decrease of Latvian direct influence in the Union's institutions should be assessed in the context of increased direct influence.¹¹⁰ • A possible accession of the European Union to the ECHR would not be incompatible with the Satversme.¹¹¹ 	internet ¹¹²

⁹⁷ Compiled and interpreted by *Jānis Pleps*, School of Business Administration Turība, doctorand at the University of Latvia. Translated from Latvian to German by *Līga Ziediņa*. 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-Simpozijis_11-12-2009_Spriedumi.pdf (p. 13 ff.) and [BDHK-Symposium_11-12-2009_Pleps.pdf](http://home.lu.lv/~tschmit1/Downloads/BDHK-Symposium_11-12-2009_Pleps.pdf).

⁹⁸ Cf. no. 7.

⁹⁹ www.satv.tiesa.gov.lv/upload/2004-01-06.rtf; English translation at [/upload/2004-01-06E.rtf](http://www.satv.tiesa.gov.lv/upload/2004-01-06E.rtf).

¹⁰⁰ See no. 24.2 ("...Eiropas Savienības tiesības ir kļuvušas 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 law, coming from outside the national legal order.

¹⁰¹ www.satv.tiesa.gov.lv/upload/2007-11-03_ostas%20lieta.htm; English translation at [/upload/judg_2007_11_03.htm](http://www.satv.tiesa.gov.lv/upload/judg_2007_11_03.htm).

(continuation Lisbon judgement)	2009	<ul style="list-style-type: none"> • 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 Statsversme [which reserves the sovereign power to the people of Latvia].¹¹³ • 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.¹¹⁴ • 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.¹¹⁵ 	
Alkotmánybíróság (Hungary)			
name	year	substance	reference
Lisbon judgement (143/2010. (VII.14.) AB)	2010	<ul style="list-style-type: none"> • 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 	Internet ¹¹⁶
Appendix: Opinions on constitutional issues in Sweden ¹¹⁷			
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.			
Konstitutionsutskottet (Riksdag Committee on the Constitution)			
(Accession to the European Union) (1993/94:KU 21)	1994	<ul style="list-style-type: none"> • 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. 	(1993/94:KU 21)

¹⁰² Cf. no. 10.4 of the judgement.

¹⁰³ Cf. no. 11.2 und 11.3 of the judgement.

¹⁰⁴ Cf. no. 15 of the judgement.

¹⁰⁵ Cf. no. 16.2 of the judgement.

¹⁰⁶ Cf. no. 16.3 of the judgement.

¹⁰⁷ Cf. no. 17 of the judgement.

¹⁰⁸ Cf. no. 17 of the judgement.

¹⁰⁹ Cf. no. 18.3 of the judgement.

¹¹⁰ Cf. no. 18.4 of the judgement.

¹¹¹ Cf. no. 18.8 of the judgement.

¹¹² www.satv.tiesa.gov.lv/upload/spriedums_2008-35-01.htm; English translation at [/upload/judg_2008_35.htm](#).

¹¹³ Cf. no. 18.10 of the judgement.

¹¹⁴ Cf. no. 19 of the judgement.

¹¹⁵ Cf. no. 20 of the judgement.

¹¹⁶ See www.mkab.hu. English press release at www.mkab.hu/admin/data/file/797_143_2010.pdf.

¹¹⁷ Compiled by *Ola Zetterquist*, University of Gothenburg.

