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Diagram 1**Important decisions of the European Court of Justice¹**

(updated edition 2011)

Preliminary remark

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

Basic concepts, implementation and enforcement of Community (Union) law			
name	year	substance	reference
Van Gend & Loos (case 26/62)	1963	<ul style="list-style-type: none"> Community law as independent (distinct) legal order direct applicability of primary Community law 	[1963] ECR 1 We ² , 95, 109, 185 HV ³ , 1
Costa/ENEL (case 6/64)	1964	<ul style="list-style-type: none"> primacy of Community law - also over <i>later</i> national law Court of Justice will "extract" the relevant questions from references for preliminary rulings 	[1964] ECR 585 We, 85, 185, 187 HV, 33
Internat. Handelsgesellschaft (case 11/70)	1970	<ul style="list-style-type: none"> primacy of Community law also over national constitutional law⁴ - also over national fundamental rights - however: fundamental rights will be protected in Community law! 	[1970] ECR 1125 HV, 35
Leberpfennig (Franz Grad) (case 9/70)	1970	<ul style="list-style-type: none"> direct applicability of decisions addressed to the member states in favour of the citizen - if the decision is unconditional and sufficiently precise 	[1970] ECR 825 HV, 7
Ratti (case 148/78)	1979	<ul style="list-style-type: none"> direct applicability of directives in favour of the citizen after expiration of the implementation period⁵ - if the directive is unconditional and sufficiently precise 	[1979] ECR 1629 We, 129 HV, 9

¹ In most cases preliminary rulings under art. 267 FEU Treaty (formerly 234 EC Treaty and 177 EEC Treaty).

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

³ Casebook *Hummer/Vedder*, Europarecht in Fällen, 4th edition 2005 (in German). See also the casebooks *Pechstein*, Entscheidungen des EuGH. Kommentierte Studienauswahl, 5th edition 2009 (in German) and *Rambaud*, Les grandes décisions de la jurisprudence communautaire, 3rd edition 2007 (in French).

⁴ Since this judgement and its acceptance by the then member states, the primacy also over national constitutional law constitutes a central *component of the *acquis communautaire**. Only its limits (the core or identity of the national constitution) are disputed. All member states that joined the Communities or Union later recognized it in the accession treaty as a legal condition for their membership. Nevertheless, nowadays it is challenged in the constitutional jurisprudence in Greece, Spain, Poland and Lithuania (see diagram 2).

⁵ See also ECJ, case 41/74, van Duyn, [1974] ECR 1337 (= We, 109, 436). Note: There is no direct application *against* the citizen (horizontal effect), ECJ, case 152/84, Marshall I, [1986] ECR 723 (= We, 132); ECJ, case C-91/92, Faccini Dori, [1994] ECR I-3325 (= We, 137, 164). There is, however, a *wide concept of the "state"*, against which directives might be applied. It includes bodies which, pursuant to a measure adopted by the state, are responsible for providing public services under the control of the state, ECJ, case C-188/89, Foster, [1990] ECR I-3313 (= We, 138). The direct applicability must be ascertained separately for the individual provisions of a directive, ECJ, case 8/81, Becker, [1982] ECR 53.

Simmenthal II (case 106/77)	1978	<ul style="list-style-type: none"> • the effect of the primacy of Community law <ul style="list-style-type: none"> - primacy in application: non-application of colliding norms of national law, without prior abrogation by the legislator, the constitutional court etc. - problematic: also (hierarchical) primacy in validity? "... preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions."⁶ 	[1978] ECR 629 We, 86, 89 HV, 36
Deutscher Milchkontor (joint cases 205-215/82)	1983	<ul style="list-style-type: none"> • implementation of Community law by the member states <ul style="list-style-type: none"> - obligation of implementation under art. 5 EEC Treaty (later: art. 10 EC Treaty, today: art. 4(3) EU Treaty) - application in accordance to national law; this must not, however, affect the scope and effectiveness of Community law • principles for the recovery of unduly paid Community aids <ul style="list-style-type: none"> - provisions excluding the recovery (with regard to such considerations as protection of legitimate expectation, loss of unjustified enrichment, passing of time-limits or awareness of the administration etc.) may be applied - however, the interests of the Community must be "taken fully into account" 	[1983] ECR 2633 HV, 205
Harz (case 79/83)	1984	<ul style="list-style-type: none"> • national law to be interpreted in the light of the directives⁷ 	[1984] ECR 1921 HV, 29
Foto-Frost (case 314/85)	1987	<ul style="list-style-type: none"> • national courts have no jurisdiction to declare community acts invalid <ul style="list-style-type: none"> - reasoning: option to get a preliminary ruling, coherence of the system of judicial protection, unity of the Community legal order, legal certainty 	[1987] ECR 4199 We, 203, 247 HV, 261
Busseni (case C-221/88)	1990	<ul style="list-style-type: none"> • coherence of the Treaties <ul style="list-style-type: none"> - therefore uniform interpretation of art. 177 EEC Treaty (later: 234 EC Treaty, today: 267 FEU Treaty), 150 EURATOM Treaty and 41 ECSC Treaty despite their different wordings 	[1990] ECR I-495 HV, 162
vin de table (case C-217/88)	1990	<ul style="list-style-type: none"> • If necessary, the member states have to take coercive measures to enforce Community law <ul style="list-style-type: none"> - in case of unforeseeable problems there is a duty of loyal cooperation with the Commission 	[1990] ECR I-2879 HV, 209
Factortame (case C-213/89)	1990	<ul style="list-style-type: none"> • interim relief to enforce Community law <ul style="list-style-type: none"> - courts of the member states must grant interim relief regardless of adverse provisions of national law 	[1990] ECR I-2433 We, 123 HV, 38
Zuckerfabrik Süderdithmarschen (joint cases C-143/88 a.o.)	1991	<ul style="list-style-type: none"> • interim relief also against the implementation of Community law <ul style="list-style-type: none"> - courts of the member states may suspend enforcement of administrative measures based on Community regulations - restrictive conditions: <ul style="list-style-type: none"> • serious doubts as to the validity of the Community act, • question referred to the ECJ, • applicant threatened with serious and irreparable damage, • due account of the interest of the Community that its acts have full effect 	[1991] ECR I-415 We, 248 HV, 220
TA-Luft (case C-361/88)	1991	<ul style="list-style-type: none"> • no implementation of directives through administrative provisions (not even through "norm-concretising administrative provisions") <ul style="list-style-type: none"> - provisions must bind not only the administration but also third parties - reasoning: legal certainty (individuals must be in a position to know with certainty the full extent of their rights) • no implementation of directives through administrative practice⁸ 	[1991] ECR I-2567 HV, 170

⁶ The ECJ finally made it clear in the joint cases C-10/97 - C-22/92, IN.CO.GE.'90 a.o., [1998] ECR I-6307, that there is only a primacy of application.

⁷ See also ECJ, case 14/83, von Colson and Kamann, [1984] ECR 1891 (from the same day) and ECJ, case C-106/89, Marleasing, [1990] ECR I-4135 (= We, 151).

⁸ See also ECJ, case 102/79, Commission v. Belgium, [1980] ECR 1473 from 1980.

European Economic Area I (opinion 1/91)	1991	<ul style="list-style-type: none"> • own court system for the European Economic Area incompatible with autonomy and function of the ECJ - jurisdiction of the (planned) EEA Court would have conflicted with the court system pursuant to art. 164 EEC Treaty (later: 220 EC Treaty, today: 19(1) EU Treaty) and therefore with the foundations of the Community • provisions in the EEA Agreement and in the Founding Treaties of the Communities to be interpreted differently even if identically worded - because of different objectives and missing transfer of sovereign rights • ECJ has to contribute to the development of Community law with regard to the realisation of the Treaty objectives - explicit commitment to a <i>purpose-directed handling of Community law</i>... • EEC Treaty as "constitutional charter of a Community based on the rule of law" - arguments concern "based on the rule of law" but not "constitutional charter" 	[1991] ECR I-6079 HV, 32, 432
Großkrotzenburg thermal power station (case C-431/92)	1995	<ul style="list-style-type: none"> • objective effect of directives, which impose unequivocal obligations (here: to assess the effects of certain projects on the environment) 	[1995] ECR I-2189 HV, 30
Alcan (case C-24/95)	1997	<ul style="list-style-type: none"> • Restricted protection of legitimate expectations in case of illegitimate state aids - no protection in case of failure to notify compliant to art. 93 EC Treaty (later: 88 EC Treaty, today: 108 FEU Treaty) - national authorities must give effect without discretion if Commission orders recovery 	[1997] ECR I-1591 HV, 727
Inter-Environnement Wallonie case C-129/96	1997	<ul style="list-style-type: none"> • precursory effect of directives - during implementation period member states must refrain from taking measures liable seriously to compromise the result prescribed⁹ 	[1997] ECR I-7411 HV, 196
in particular: state liability pursuant to Community (Union) law			
Francovich (joint cases C-6/90 and 9/90)	1991	<ul style="list-style-type: none"> • state liability pursuant to Community law for non-implementation¹⁰ of directives (basic decision) - reasoning: inherent in the system of the Treaty ("aus dem Wesen der mit dem EWG-Vertrag geschaffenen Rechtsordnung") - argument of effet utile, reference to the loyalty obligations of the member states - conditions of liability: • result prescribed by the directive entails grant of rights to individuals, • content of those rights can be identified on the basis of the provisions of the directive, • causality 	[1991] ECR I-5357 We, 162 HV, 188
Brasserie du Pêcheur/Factortame (joint cases C-46/93 and 48/93)	1996	<ul style="list-style-type: none"> • state liability pursuant to Community law for violation of directly applicable provisions - judges justify the judicial introduction of state liability with the task conferred on them by art. 164 EC Treaty (later: 220 EC Treaty, today: 19(1) EU Treaty) of ensuring "that ... the law is observed" ("sichern ... die Wahrung des Rechts") - definition of the conditions of liability analogously to art. 215(2) EC Treaty (today: 340 FEU Treaty) in accordance with the general principles common to the laws of the member states - liability only in case of a sufficiently serious breach of Community law (this applies from then on also to incorrect implementation of directives) - liability also for unlawful legislative acts - fault no condition of liability - remarks on the extent of reparation 	[1996] ECR I-1029 We, 171 HV, 176
Dillenkofer (joint cases C-178/94 a.o.)	1996	<ul style="list-style-type: none"> • on the conditions of a sufficiently serious breach and the grant of rights to individuals 	[1996] ECR I-4845 HV, 193
Hedley Lomas (case C-5/94)	1996	<ul style="list-style-type: none"> • state liability also for violation of Community law by administrative practice 	[1996] ECR I-2553 HV, 187
Köbler (case C-224/01)	2003	<ul style="list-style-type: none"> • state liability also for violation of Community law by judgements of a supreme court - only in case of a manifest infringement, in particular of a "manifest breach of the case-law of the Court in the matter" - only financial compensation - revision of the relevant judgement is not required 	[2003] ECR I-10239; We, 179; HV, 195

⁹ See also ECJ, case C-422/05, airport noise, [2007] ECR I-4749.

¹⁰ As regards state liability for *incorrect* implementation of directives see ECJ, case C-392/93, British Telecommunications, [1996] ECR I-1631 (= We, 178).

Competences			
name	year	substance	reference
FÉDÉCHAR (case 8/55)	1956	<ul style="list-style-type: none"> the idea of <i>implied powers</i> - "... it is possible to apply a rule of interpretation generally accepted in both international and national law, according to which the rules laid down by an international treaty or a law presuppose the rules without which that treaty or law would have no meaning or could not be reasonably and usefully applied." 	[1956] ECR 292 HV, 133
AETR/EART (case 22/70)	1971	<ul style="list-style-type: none"> implied power of the Community to conclude international treaties¹¹ - may even arise from acts of secondary law decisions of the ministers to be classified as Council decisions or decisions of the representatives of the governments of the Member states (meeting within the Council) according to the distribution of powers 	[1971] ECR 263 We, 29, 91, 214 HV, 231, 380
System of generalized tariff preferences I (case 45/86)	1987	<ul style="list-style-type: none"> the choice of the legal basis for a measure must be based on objective factors which are amenable to judicial review¹² art. 235 EEC Treaty (later: 308 EC Treaty, today: 352 FEU Treaty) is only a subsidiary legal basis 	[1987] ECR 1493 We, 33, 54 HV, 150
Immigration policy (V.Rs 281,283-285,287/85)	1987	(example for a <i>purpose-directed handling</i> of Community law)	[1987] ECR 3203 HV, 134
Product Safety Directive (case C-359/92)	1994	<ul style="list-style-type: none"> the concept of approximation of laws in the internal market pursuant to art. 100a EEC Treaty (later: 95 EC Treaty, today: 114 FEU Treaty) encompasses measures relating to a specific product or class of products and, if necessary, individual measures concerning those products 	[1994] ECR I-3681 HV, 137
Accession to ECHR (opinion 2/94)	1996	<ul style="list-style-type: none"> no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms - no competence arising from art. 235 EC Treaty (later: 308 EC Treaty, today: 352 FEU Treaty) - reasoning: the integration into the institutional system of the ECHR (→ the submission under the jurisdiction of the European Court of Human Rights...) would have fundamental institutional implications for the Union and therefore be of a "constitutional dimension" 	[1996] ECR I-1763 HV, 131
Airport transit (case C-170/96)	1998	<ul style="list-style-type: none"> measures under the "Third Pillar" must not encroach upon the powers conferred by the EC Treaty on the Community - insofar ECJ has jurisdiction to review pursuant to art. L (later: 46) EU Treaty 	[1998] ECR I-2763 HV, 157
Tobacco advertising (case C-376/98)	2000	<ul style="list-style-type: none"> no competence of the Community for a general prohibition of advertising for tobacco products - limits of the competence for approximation of laws in the internal market pursuant to art. 100a EC Treaty (later: 95 EC Treaty, today: 114 FEU Treaty) (one of the first cases of a <i>rigorous</i> review with regard to Community competences)¹³ 	[2000] ECR I-8419 We, 40 HV, 143
Institutions			
name	year	substance	reference
Roquette Frères / Isoglucose (case 138/79)	1980	<ul style="list-style-type: none"> due consultation of the European Parliament is an essential formality - "essential factor in the <i>institutional balance</i> intended by the Treaty" - "reflects ... the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly" due consultation implies that the parliament has actually expressed its opinion 	[1980] ECR 3333 HV, 158, 164

¹¹ Confirmed in ECJ, joint cases 3,4,6/76, Kramer, [1976] ECR 1279 (= HV, 383). The international treaties concluded by the Community may even establish new institutions of public international law, ECJ, opinion 1/76, Laying-up Fund for Inland Waterway Vessels, [1977] ECR 741 (= HV, 427).

¹² Confirmed in ECJ, case C-300/89, titanium dioxide, [1991] ECR I-2867.

¹³ Note, however, the return to a "generous" review with regard to Community competences in the case C-380/03, tobacco advertising II.

Les Verts (case 294/83)	1986	<ul style="list-style-type: none"> • possibility to bring actions for annulment against measures adopted by the European Parliament (concerning the former art. 173)¹⁴ <ul style="list-style-type: none"> - reasoning: EEC is a <i>community based on the rule of law</i>, inasmuch as neither its member states nor its institutions can avoid judicial review • EEC Treaty as constitutional charter of the community 	[1986] ECR 1339 We, 212, 231, 255 HV, 32, 145
Tchernobyl I (case C-70/88)	1990	<ul style="list-style-type: none"> • European Parliament may bring actions for annulment to safeguard its prerogatives (concerning the former art. 173)¹⁵ <ul style="list-style-type: none"> - reasoning: observance of the institutional balance - other legal remedies may prove to be ineffective or uncertain - note: in no. 26 f. the Court presents a reasoning which is not legal but purely political and ignores the (then) prevailing law! 	[1990] ECR I-2041
System of generalized tariff preferences II (case C-65/93)	1995	<ul style="list-style-type: none"> • Community institutions - duty of loyal cooperation¹⁶ <ul style="list-style-type: none"> - note the parallel to the principle of loyalty between constitutional bodies ("Organtreue") in constitutional law - if the European Parliament fails to comply with it during the consultation procedure, the Council does not need to await its opinion 	[1995] ECR I-643 HV, 110, 166
Economic fundamental freedoms			
name	year	substance	reference
Diamantarbeiders (cases 2 and 3/69)	1969	<ul style="list-style-type: none"> • large concept of charges having equivalent effect to custom duties in art. 12 EEC Treaty (later: 25 EC Treaty, today: 30 FEU Treaty) <ul style="list-style-type: none"> - any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, even if it is not imposed for the benefit of the state, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product. 	[1969] ECR 211 CMLRev 1969, 335
Dassonville (case 8/74)	1974	<ul style="list-style-type: none"> • large concept of measures having equivalent effect to quantitative restrictions on imports in art. 30 EEC Treaty (later: 28 EC Treaty, today: 34 FEU Treaty)¹⁷ <ul style="list-style-type: none"> - "all trading rules enacted by member states which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade" 	[1974] ECR 837 We, 336 HV, 458
van Binsbergen (case 33/74)	1974	<ul style="list-style-type: none"> • large concept of encroachments on the freedom to provide services: also non-discriminating restrictions (by indistinctly applicable measures) <ul style="list-style-type: none"> - all "requirements ... which may prevent or otherwise obstruct the activities of the person providing the service"¹⁸ - however, specific requirements having as their purpose the application of (indistinctly applicable) professional rules may be justified by the general good 	[1974] ECR 1299 HV, 600
Walrave and Koch (case 36/74)	1974	<ul style="list-style-type: none"> • horizontal effect of the freedom of movement for workers on collective regulations of private persons concerning employment or the provision of services 	[1974] ECR 1405 HV, 539
Cassis de Dijon (case 120/78)	1978	<ul style="list-style-type: none"> • regulations on necessary properties of products as measures having equivalent effect to restrictions on imports in the sense of art. 30 EEC Treaty (today: 34 FEU Treaty)¹⁹ <ul style="list-style-type: none"> - this includes non-discriminative restrictions by indistinctly applicable measures - de facto introduction of the country of origin principle - however: possible justification by "mandatory requirements" of public interests (⇒ inherent limits - proportionality) 	[1979] ECR 649 CMLRev 1979, 494 We, 375 HV, 456

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

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

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

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

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

¹⁹ Confirmed in ECJ, case 178/84, *Reinheitsgebot für Bier (German purity law for beer)*, [1987] ECR 1227 (= We, 381 = HV, 489). The restriction of the label "beer" to products, which had been brewed in compliance to the traditional purity law, was not justified by mandatory requirements of consumer protection, because regulations on compulsory consumer information were sufficient. The absolute prohibition to sell beers with additives was unproportional and therefore not justified under art. 36 EEC Treaty (later art. 30 EC Treaty, today: 36 FEU Treaty).

Buy Irish (case 249/81)	1982	<ul style="list-style-type: none"> art. 30 EEC Treaty (today: 34 FEU Treaty) prohibits the organisation or support of publicity campaigns to promote domestic products by the institutions of the member states 	[1982] ECR 4005 We, 350 HV, 462
SPUC v. Grogan (case C-159/90)	1991	<ul style="list-style-type: none"> Medical abortion, performed in accordance with national law, constitutes a service within the meaning of art. 60 EEC Treaty (later: 50 EC Treaty, today: 57 FEU Treaty) information by students associations about possibilities of abortion in other member states is not protected under art. 59 EEC Treaty (later: 49 EC Treaty, today: 56 FEU Treaty) because it constitutes merely a manifestation of freedom of expression²⁰ 	[1991] ECR I-4685 We, 471 HV, 329
Waste shipment (case C-2/90)	1992	<ul style="list-style-type: none"> even waste falls within the scope of art. 30 EEC Treaty (today: 34 FEU Treaty) <ul style="list-style-type: none"> - even non-recyclable waste however, restrictions on imports can be justified by imperative requirements of environmental protection <ul style="list-style-type: none"> - reference to the principle of correction at source in environmental law laid down by art. 130r(2) EEC Treaty (later: 174(2) EC Treaty, today: 191(2) FEU Treaty) 	[1992] ECR I-4431 CMLRev 1993, 365 HV, 444, 499
Keck (joint cases C-267, C-268/91)	1993	<ul style="list-style-type: none"> corrective reduction of the Dassonville formula: only product-related, not sales-related rules <ul style="list-style-type: none"> - regulations on the general conditions of sale which equally concern the distribution of domestic and foreign products not to be considered as measures having equivalent effect to quantitative restrictions on imports - this applies also to regulations concerning shop closing times, ECJ, joint cases C-69/93 and C-258/93 (1994) 	[1993] ECR I-6097 WE, 391; HV, 466 [1994] ECR I-2355
Gebhard (case C-55/94)	1995	<ul style="list-style-type: none"> the freedom of establishment as a general prohibition of restrictions: Measures liable to "hinder or make less attractive the exercise" of the freedom also represent an encroachment that needs to be justified such encroachments are only justified if <ul style="list-style-type: none"> • they are applied in a non-discriminatory manner; • they are justified by imperative requirements in the general interest; • they are proportionate (suitable and necessary) (so called Gebhard formula)²¹ 	[1995] ECR I-4165 HV, 589 We, 316
Bosman (case C-415/93)	1995	<ul style="list-style-type: none"> freedom of movement for workers of professional football players <ul style="list-style-type: none"> - large concept of encroachment on the freedom granted in art. 48 EEC Treaty (later: 39 EC Treaty, today: 45 FEU Treaty): even non-discriminative restrictions²² - <i>direct horizontal effect</i> of art. 48 EEC Treaty (today: 45 FEU Treaty): applies also to regulations of sport associations for professional football players - unjustified encroachment by the transfer rule and the nationality clauses for matches in championships 	[1995] ECR I-4921 HV, 545
French blockades (case C-265/95)	1997	<ul style="list-style-type: none"> member states obliged to intervene against import blockades set up by private persons (art. 30 read together with art. 5 EC Treaty, today: art. 34 FEU Treaty read together with art. 4(3) EU Treaty)²³ <ul style="list-style-type: none"> - dogmatic background: a <i>duty of protection</i> of the member states to ensure the enforcement of the fundamental freedoms - the concerned member state must adopt all appropriate measures to guarantee the full scope and effect of Community law, unless it can show that action on its part would have consequences for public order with which it could not cope by using the means at its disposal (!) - the member state cannot fulfil its obligations by providing compensation 	[1997] ECR I-6959 We, 347 HV, 106

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

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

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

²³ See also ECJ, case C-112/00, *Schmidberger*, [2003] ECR I-05659 (= We, 349, 407).

Centros (case C-212/97)	1999	<ul style="list-style-type: none"> freedom of establishment guarantees the right to register a branch of a company which has been established in another member state only for the purpose to evade the application of national law and which does not conduct any business in that state but intends to carry on its entire business in the State in which the branch is to be created - ECJ affirms cross-border context and denies abuse of the freedom of establishment - the creditors are sufficiently protected by the circumstance that the company holds itself out as a company governed by the foreign law, cf. ECJ, case C-167/01, Inspire Art 	[1999] ECR I-1459 We, 458 HV, 594 We, 462
Angonese (case C-281/98)	2000	<ul style="list-style-type: none"> <i>direct horizontal effect</i> of the prohibition of discrimination between workers on grounds of nationality (art. 48(2) EC Treaty, now: 45(2) FEU Treaty) on employers - according to the wording of the judgement, even generally on "private persons" - indirect discriminations may be justified by objective reasons - SCEPTICISM IN LEGAL SCIENCE: this could lead to an erosion of the fundamental right to private autonomy 	[2000] ECR I-4139 HV, 541
Schmidberger (case C-112/00)	2003	<ul style="list-style-type: none"> fundamental rights as inherent limits to the economic fundamental freedoms - interests must be weighed having regard to all the circumstances of the case in order to achieve a fair balance - note: dogmatically, these remarks are nothing but the formulation of a matter of course, which is self-evident in any legal system based on the fundamental value of the respect of fundamental rights! 	[2003] ECR I-5659 We, 349, 407 HV, 527
Omega (Laserdrome) (case C-36/02)	2004	<ul style="list-style-type: none"> human dignity as limit to the economic fundamental freedoms - as a fundamental right and an important element of public policy, it may justify the prohibition of certain services (in the given case the organizing of killing simulation games with laser pistols) - member states enjoy a margin of discretion with regard to the protection of this interest in their constitution 	[2004] ECR I-9609 HV, 316
Laval (case C-341/05)	2007	<ul style="list-style-type: none"> horizontal effect of the freedom to provide services (art. 49 EC Treaty, today: 56 FEU Treaty) against trade unions: applies also to collective actions²⁴ - consequently, the exercise of an essential fundamental right of the trade unions needs to be justified (!) if it is directed against a foreign service provider 	[2007] ECR I-11767
Fundamental rights			
name	year	substance	reference
Stauder (case 29/69)	1969	<ul style="list-style-type: none"> Fundamental rights as general principles of Community law²⁵ 	[1969] ECR 419 We, 65, 184 HV, 301
Nold (case 4/73)	1974	<ul style="list-style-type: none"> the constitutional traditions common to the member states are the basis for the own jurisprudence on fundamental rights - international treaties for the protection of human rights, to which the member states have acceded, can also supply guidelines fundamental rights are protected subject to restrictions in the pursuit of public interests (in particular of the objectives of the Communities) 	[1974] ECR 491 We, 65 HV, 303
Hauer (case 44/79)	1979	<ul style="list-style-type: none"> the constitutional traditions common to the member states and the ECHR are the basis for the own jurisprudence on fundamental rights the right to property and the freedom to pursue trade or profession as fundamental rights²⁶ - they may, however, be restricted with regard to their social function (reasoning about limits based on comparison of law) - the principle of proportionality as limit of limits; absolute protection of the essence of the rights 	[1979] ECR 3727 We, 68 HV, 304

²⁴ See also ECJ, case C-438/05, Viking.

²⁵ Note, that according to the decision in the case *Internationale Handelsgesellschaft* from 1970 (see above, p. 1) the protection of fundamental rights in the Communities is provided at the level of Community law and not of national constitutional law.

<p>Hoechst (joint cases 46/87, 227/88)</p>	<p>1989</p>	<ul style="list-style-type: none"> • power to search of the Commission in the field of competition law <ul style="list-style-type: none"> - according to special legal bases (in secondary law); duty of assistance of the national authorities - Commission must respect the relevant procedural guarantees laid down by national law. Courts of the member states may review the measures of constraint envisaged but not the Commission decision ordering the investigation • interpretation of Community law in the light of the fundamental rights • right to legal protection against interventions (encroachments) by the public authorities; principle of the lawfulness of administrative action • fundamental right to the inviolability of the home only in regard to the private dwellings of natural persons, not to the business premises of enterprises²⁷ 	<p>[1989] ECR 2859 We, 566 HV, 307</p>
<p>Banana market organisation (case C-280/93)</p>	<p>1994</p>	<ul style="list-style-type: none"> • the freedom to pursue trade or profession may be restricted extremely <ul style="list-style-type: none"> - often criticised example of the negligent judicial review with regard to the limits of limits and the <i>low practical effectiveness of the fundamental rights</i> in the jurisprudence of the ECJ following from that - unbalanced and biased stressing of the "broad discretion" of the Community legislator when encroaching on fundamental rights - an encroachment on fundamental rights is only illegal, if the measure has been proved to be "manifestly inappropriate" [here in the sense of "unsuitable"] 	<p>[1994] ECR I-4973 HV, 85</p>
<p>Directive on biopatents (case C-377/98)</p>	<p>2001</p>	<ul style="list-style-type: none"> • human dignity as a fundamental right <ul style="list-style-type: none"> - dogmatics still unclear (in particular: are there limits to human dignity, which may justify encroachments?) - see also ECJ, case C-36/02, Omega (Laserdrome) (human dignity as a limit to the economic fundamental freedoms) 	<p>[2001] ECR I-7079</p>
<p>Carpenter (case C-60/00)</p>	<p>2002</p>	<ul style="list-style-type: none"> • With regard to the fundamental right to respect for family life, the home state of a service provider who provides services in other member states must not refuse the right to reside in its territory to that provider's spouse, who is a national of a third country; art. 49 EC Treaty (today: 56 FEU Treaty) is to be interpreted to that effect in the light of that fundamental right <ul style="list-style-type: none"> - consequence: the expulsion of the spouse violates the freedom to provide services of the husband (who must take care himself of his children...) - problematic: thus the member states are bound to the fundamental rights of the European Union even beyond the implementation and application of Union law 	<p>[2002] ECR I-6279 We, 477</p>
<p>Mangold (case C-144/04)</p>	<p>2005</p>	<ul style="list-style-type: none"> • grounds of age already before period for transposition of directive 2000/78/EC expires²⁸ <ul style="list-style-type: none"> - this controversial judgement provoked the appeal of HERZOG/GERKEN to "Stop the European Court of Justice"²⁹ but has been considered legitimate by the German Bundesverfassungsgericht³⁰ 	<p>[2005] ECR I-9981</p>
<p>Kadi/Al Barakaat (joint cases C-402/05 P, C-415/05 P)</p>	<p>2008</p>	<ul style="list-style-type: none"> • legal acts of the Community, which implement decisions of the Sanctions Committee of the UN Security Council for the fight against terrorism that do not leave autonomous discretion, are not immune from jurisdiction with regard to the review of their compatibility with fundamental rights • confirmation of the present protection of fundamental rights and explicit and effective application of the right to respect for property, right to be heard and right to effective judicial review 	<p>[2008] ECR I-6351</p>

²⁶ Inventories of the individual fundamental rights, which have been worked out by the ECJ, can be found at *Hummer/Simma/Vedder*, *Europarecht in Fällen*, 3rd edition 1999, p. 436 ff.; *Kingreen*, in: Calliess/Ruffert (editors), *EUV/EGV*, 2nd edition 2002, art. 6 EU Treaty no. 93 ff.

²⁷ This position has been abandoned in ECJ, case C-94/00, *Roquette Frères*, [2002] ECR I-9011, no. 29 with regard to the judgement of the ECHR from 16.04.2002 in the case *Stés Colas Est and others v. France*.

²⁸ However, see now ECJ, case C-427/06, *Bartsch*: no general prohibition of discrimination, which would even apply if in a national case no Community law was involved.

²⁹ *Herzog/Gerken*, *Stop the European Court of Justice*, *EU Observer* 10.09.2008 (<http://euobserver.com/9/26714/?rk=1>) = *Stoppt den Europäischen Gerichtshof*, *FAZ* vom 08.09.2008, p. 8 (www.cep.eu/fileadmin/user_upload/Pressemappe/CEP_in_den_Medien/Herzog-EuGH-Webseite.pdf).

³⁰ Cf. *BVerfG*, 06.07.2010, 2 BvR 2661/06 (*Honeywell*), www.bundesverfassungsgericht.de/entscheidungen/rs20100706_2bvr266106en.html; see also the dissenting vote of the Justice *Landau*.

Citizenship of the Union			
name	year	substance	reference
Baumbast (case C-413/99)	2002	<ul style="list-style-type: none"> • direct applicability of the general freedom of movement and residence (art. 18 EC Treaty, now: 21 FEU Treaty) • limitations and conditions set by secondary law must be applied in compliance with the general principles of Community law, in particular the principle of proportionality 	[2002] ECR I-7091
Zhu and Chen (Rs. C-200/02)	2004	<ul style="list-style-type: none"> • freedom of movement and residence of underage children born in the host state who are citizens of the Union but whose parents are not <ul style="list-style-type: none"> - in the given case: right of residence in the UK of a child, whose mother is Chinese but who has obtained Irish (!) citizenship by being born in Belfast (UK) - to rely on the freedom of movement and residence does not require to move to another member state - to rely on the freedom of movement and residence does not require a certain age - to rely on the freedom of movement and residence does not require own resources if sickness insurance and sufficient resources are provided by the alimentering parent (concerning art. 1(1) of Directive 90/364) • right of residence of the accompanying alimentering parent <ul style="list-style-type: none"> - a refusal to allow the parent to reside with that child in the host member State would deprive the child's right of residence of any <i>useful effect</i> - right of residence already follows from art. 18 EC Treaty (today: 21 FEU Treaty) 	[2004] ECR I-9925