



LUND UNIVERSITY
Faculty of Law

Constitutional Foundations and Fundamental Principles

Module 1

Reading materials

Lectures

- Conferral and Subsidiarity
- The Effects of EU Law
- The Charter of Fundamental rights
- The Principle of Proportionality
- The Principle of Non discrimination
- The Principle of Legal Certainty

Case law

Lecture: Conferral and Subsidiarity

- **C-210/03** – Swedish Snus Case
Establishes that any measure genuinely intended to remove any actual or potential obstacles to the internal market can fall within the competence of the EU.
- **C-210/03** – Swedish Match
- **C-58/08** – Vodafone
 - Summary: http://ec.europa.eu/dgs/legal_service/arrets/08c058_en.pdf
- **C-376/98** – Germany vs. Parliament and Council

Lecture: The Effects of EU Law

- **C-26/62 – Van Gend en Loos**
Establishes that provisions of the Treaty Establishing the European Economic Community are capable of creating legal rights which can be enforced by both natural and legal persons before the courts of the Community's member states. This is called the principle of direct effect.
- **C-6/64 – Costa vs. ENEL**
Establishes the supremacy of European Union law over the laws of its member states. This principle requires EU law to have a higher normative value, and has to be given effect – even in the presence of conflicting national norms.
- **C-106/89 – Marleasing**
Establishes an obligation for national courts to interpret national law in light of EU law, and should, as far as possible, be given an interpretation which is in conformity with EU law (all EU law, not just the one which has direct effect).

Lecture: The Charter of Fundamental rights

- **C-399/11 – Melloni**
- **C-617/10 – Åkerberg Fransson**
- **C-34/13 – Kušionová**

Lecture: The Principle of Proportionality

- **C-523/12 – Dirextra**
Proportionality, appropriate measure
- **C-58/08 – Vodafone** (see summary above)
- **C-356/12 – Glatzel**

Lecture: Non-Discrimination

- **C-127/07 – Société Arcelor Atlantique et Lorraine and Others**
Principle of equal treatment, objective justification.
Summary: http://ec.europa.eu/dgs/legal_service/arrets/07c127_en.pdf
- **C-185/96 – Commission vs. Hellenic Republic**
Direct discrimination on grounds of nationality.
- **C-25/02 – Rinke**
Indirect discrimination on grounds of sex. Justification on objective requirements.

Lecture: The Principle of Legal Certainty

- **C-43/75 – Defrenne**
Established that the principle of equal pay between men and women had horizontal direct effect. Legal certainty.

Research Material

Fundamental Rights Protection in the EU Post Lisbon Treaty, by Xavier Groussot

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628552

Weak Right, Strong Court – The Freedom to Conduct Business and the EU Charter of Fundamental Rights, by Xavier Groussot

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2428181

Non mandatory reading

Lecture: Conferral and Subsidiarity

Suggested Reading:

Basic overview

- Europa Guide to the Treaties: Division of Competences within the Union (European Commission, 2010). Available at: http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0020_en.htm
- Europa Guide to the Treaties: The Principle of Subsidiarity (European Commission, 2010). Available at: http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0017_en.htm

These pages has a number of links to Treaty articles and other resources which the student is encouraged to follow in order to get a basic overview of this topic.

Going deeper

- Thomas, M. Subsidiarity: assessing an EU Proposal. United Kingdom House of Lords Select Committee publication, available at: <http://www.parliament.uk/documents/lords-committees/eu-select/subsidiarity/apply-subsidiarity.pdf>
- S R Weatherill, 'The limits of legislative harmonisation ten years after Tobacco Advertising: how the Court's case law has become a "drafting guide"' (2011) 12 German Law Journal 827, available at: <http://www.germanlawjournal.com/index.php?pageID=11&artID=1344> (the German Law Journal is an open access journal, free to all).
- Christoph Ritzer, Marc Ruttloff and Karin Linhart, How to Sharpen a Dull Sword – The Principle of Subsidiarity and its Control, 7 German Law Journal 733-760 (2006), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=755>

Lecture: The Charter of Fundamental rights

Suggested Reading:

- Opinion 2/13
<http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=160882&occ=first&cid=56752>

Lecture: The Principle of Proportionality

Suggested Reading:

- Koen Lenaerts and Piet van Nuffel, European Union Law, 3rd ed, Sweet & Maxwell, 2009.

Lecture: Non-Discrimination

Suggested Reading:

Basic overview:

- Eurofond Information Sheet on Discrimination (2014, European Commission) available at: <http://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/discrimination>

The page has a number of links to other concepts (such as 'equal treatment' and 'the principle of non-discrimination' which the student is encouraged to click on, in order to get a basic overview of those other concepts.

Going deeper:

- De Schutter, Olivier, Three Models of Equality and European Anti-Discrimination Law Northern Ireland Legal Quarterly, Vol. 57, no. 1, p. 1-56 (2006) . Available at SSRN: <http://ssrn.com/abstract=2446901>
- Christopher McCrudden and Sacha Prechal The Concepts of Equality and Non-Discrimination in Europe: A practical approach; Report of the European Network of Legal Experts in the Field of Gender Equality (European Commission, 2009). Available at: <http://ec.europa.eu/social/BlobServlet?docId=4553&langId=en>