Introduction to the International Dimensions of Law

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Introduction

Public International Law | Private International Law
Domestic Law | European Law | Comparative Law
Introduction to the International Dimensions of Law

- **Public international law**
  - Uniform private law
  - Choice of Law rules

- **Private international law**
  - Conflict of laws
  - Adjudicatory jurisdiction

- **Recognition & Enforcement**
Introduction
International Law and Domestic Law

International law:
- relations of states & international organizations (public)
- the cross-border relations of private persons (private)
  = both public and private international law

Domestic law:
- everything else
- conduct or status of individuals, corporations, ‘private’ entities
- relations between the national state and its citizens
  within each state
Public International Law

- Relations between states and states and international organizations
- Individuals and states: human rights
- Individuals and states: international criminal law
Public International Law | Sources

- **Treaties**: agreement between two (bilateral) or among several states (multilateral) reached by the executive branches of the governments (eg President), often with legislative branch’s (eg Parliament) support/ratification

- **Customary law** (*Gewohnheitsrecht*): evolving from the longlasting observation of a certain (non-binding) rule by a great number of states

- **Acts of international organizations**: int‘l organizations are established by treaties among states: If the states provide so in the respective treaty, the decisions of organs of international organizations may also be sources of binding public int’l law
Public International Law | Enforcement

- legislator and subject to the legislation identical
- case of an international treaty the Contracting States are the legislators and they are at the same time bound by the rights and duties established by the treaty.
- customary public int’l law: The customs are established by state practice (legislator) and those subjected to customary rules are again the states

**weakness: no rule enforcement**

*International Court of Justice* (The Hague, NL) – limited field of competence
*European Court of Human Rights* – only ECHR
*United Nations – Security Council* – only sanctioning
Chapter 3 | Lesson 1

Public Int’l Law | Historical development & Implementation to Austrian Law
Historical development

15th & 16th century

- increasing number of independent states: modern nation state
- relations between states
- customary rules of public international law
- Hugo Grotius: law of nature

18/19th century

- expansion of european civilisations, colonialism (modern transport)
- rise of new powerful states
- greater destructiveness of modern warfare
- Industrial Revolution (new inventions)
- need for a new system of rules
- Law of war and neutrality, arbitral tribunals, bilateral treaties
Historical development

20th century

- Permanent Court of Arbitration (Hague Conference of 1899 and 1907)
- Permanent International Court of Justice in The Hague (1921)
- League of Nations after WW I
- UNO (1945) after WW II

Characteristics

- Multilateral treaties (conventions)
- International organizations
- Substantive expansion: to economic, environmental and social concerns (not only war and peace)
- Substantive expansion: to human rights of individuals against states
Alternative Views of Public Int’l Law

Traditional Views

natural law
- pre-existence of a set of rule (demands of reason, God)
- states are bound to public int’l law by reason of mankind / force of nature / God

positivists
- primary weight to customary rules and treaty rules
- states consented to be bound by public int’l law
Alternative Views of Public Int’l Law

Critique

Is public int’l law really „law“ or mere „politics“?
• Very imprecise and vague
• Frequent breaches due to fundamental problems with enforceability

Critique of New Haven School
• Rules have the aim of hiding real nature of political problems: deception
• They confirm the powerful and preserve the status quo (interest of states)
• Advocate a more policy oriented approach: neutral observer, problem and goals, ethics – basic values of human dignity and of a free society for policy recommendations (in the common interest, interest of citizens)
• Law as an instrument
Relationship to Austrian Domestic Law | Monism

publ. int‘l law is brought into being by domestic law

publ. int‘l law makes the existence of domestic law possible
Relationship to Austrian Domestic Law | Dualism

Two separate legal systems co-exist in the realm of law
Relationship to Austrian Domestic Law

How can public int'l law become valid and applicable under the domestic legal system?

- act of transformation
- automatic incorporation

- public int'l law becomes domestic law
- can be changed or removed by domestic law

Order of application

- rule remains a rule of public int'l law
- cannot be changed by domestic law
Customary public int‘l law

- Diplomatic relations between states (duties of neutral states, sovereign immunity)
- Practice of international organs (status and powers of int. organizations)
- State law, decision of state courts, state military or administrative practices

Art 9 Abs 1 B-VG

‘Die allgemein anerkannten Regeln des Völkerrechtes gelten als Bestandteile des Bundesrechtes.’

- **Customary** public int’l law is declared **part of Austrian federal law**
- no special act of transformation is **necessary**
International treaties

= convention = state treaty

- most important source of public international law

- Agreement = contract between states and/or int‘l organizations

- establishes rights of states and imposes obligations on states
  sometimes obligation to create directly enforceable rights and
duties of private persons in their own legal systems

  Creates uniform (public or private) law, e.g. the Vienna Sales
Convention (CISG)
International Treaties

Federal President of Austria

changes or supplements
Austrian statutory law

• consent of the Austrian parliament is necessary
• ‘ordinary’ statutory law: majority decision
• constitutional law: 2/3 majority

Treaty

Federal President of Russia

does not change or supplement
Austrian statutory law

• no consent necessary
• president can delegate his competence to federal government or federal minister
Chapter 3 | Lesson 2

United Nations
Organs of the United Nations

• 6 main Organs

• General Assembly – Art 9 UN Charter
  • 192 nations
  • ‘one nation – one vote’

• Security Council – Art 23 UN Charter
  • 5 permanent Members (China, F, GB, Russia, USA; 10 non-permanent members

• Economic & Social Council – Art 61 UN Charter
• Trusteeship Council – Art 86 UN Charter
• International Court of Justice – Art 92 UN Charter (15 judges)
• Secretariat – Art 97 UN Charter
UN around the World

- Washington DC:
  - International Monetary Fund
  - World Bank Group
- New York:
  - Secretariat
  - UNESCO
  - Development Programme
  - Development Fund for Women
- Montreal:
  - Civil Aviation Org
- Bern:
  - Universal Postal Union
- Vienna:
  - IAEA
  - Office on Drugs & Crime
  - Industrial Development
- London:
  - Maritime Org
- Tokyo:
  - UN University
- Kingston:
  - Seabed Authority
- Geneva:
  - Department for Disarmament
  - WHO
  - Human Rights Commission
  - Intellectual Property Org
  - ILO
  - Population Fund
  - UNHCR
  - Meteorological Org
  - Telecommunications Union
- Rome:
  - World Food Programme
  - Food and Agriculture Org
  - Fund for Agricultural Development

Introduction to the International Dimensions of Law
Areas of Public International Law

- war and peace
- human rights
- international economic order
- sustainable development
General prohibition to use force

Art 2 (4) UN-Charter

• ‘All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations’

  binds states

Example: September 11th - Terrorist attacks; Akcakale – rebel groups

• Problem: private group, not state

• private group – no legal subject of public int‘l law

• Can terrorist attacks be attributed to a certain state?

Art 2 (4) UN-Charter applicable to internal conflicts

• Art 2 (4) UN-Charter not applicable to the use of force by a state against members of its own population

• Exception: internal use of force amounts to a threat to or breach of international peace and security (Art 1 (1) UN- Charter)
Exceptions

Exceptions of Art 2 (4) UN-Charter

- Right of self-defence (Art 51 UN-Charter)
- System of collective security (Artt 39-50 UN-Charter)

Right of self-defence (Art 51 UN-Charter)

- Armed attack (in breach of Art 2 (4) UN) against a member state of UN
- Act of self-defence follows directly after attack and is proportionate to attack
- Measures of self-defence must be immediately reported to Security Council

Example: September 11th - Terrorist attacks

- Terrorist attacks were attributed to Al Qaida (Osama Bin Laden) and Taliban Government of Afghanistan (state)
- USA attacked Afghanistan on October 7th as an “immediate reaction”
- proportional self-defence?
General prohibition to use force

Further Issues

collective self-defense: e.g. NATO

preventive self-defense: A in case of a mere threat to international peace in the sense of Art 1 (1) UN Charter, but Art 51 UN Charter – „[...] armed attack occurs“

If collective security system fails?
The system of collective security (Artt 39-50 UN-Charter)

Competences of Security Council, Art 39 UN-Charta
- determination whether use of force is a violation of Art 2 (4) UN-Charter: „threat to peace, breach of peace, or act of aggression“
- sanctions against the aggressor

How is a potential or actual aggressor determined?
- ‘Act of aggression’ defined by Resolution 3314 of the General Assembly
- ‘Threat to peace’ or ‘breach of the peace’, Art 1 (1) UN-Charter

Sanctions, Chapter VII UN-Charter
- ‘peaceful measures’(Art 41 UN-Charter)
  - Interruption of traffic by rail, sea, air
  - Interruption of communication facilities (postal services,..)
  - Partial or complete economic boycotts
  - Severance of diplomatic relations
The system of collective security
(Art 39-50 UN-Charter)

Sanctions, Chapter VII UN-Charter

- ‘peaceful measures’ (Art 41 UN-Charter)
- if inadequate or ineffective: military measures (Art 42 UN-Charter)
  carried out by Member States

When the security council acts under chapter VII of the UN Charter to restore international peace and security in case of a breach of peace, threat to peace, or act of aggression it can depart from the rules of public int’l law

collective security mechanism fails
due to veto power of permanent members of Security Council

Members of UN step in: Uniting for Peace Resolution 1950 by General Assembly
Customary law? Illegal but morally legitimate? Abuse of power/right?
Chapter 3 | Lesson 3

Human Rights
Historical Development

• originally – **internal affair, not a concern of int‘l law**
• modern ‘human rights law’, only **post 1945: NAZI, Holocaust**
• **UN Charter**
  • general obligations requiring UN Member States to respect human rights
  • creation of a Human Rights Commission, now Council
• Numerous **UN international instruments**
  • Universal Declaration of Human Rights
  • Genocide Convention 1948
  • Convention on the Political Rights of Women 1952
  • Standard Minimum Rules for the Treatment of Prisoners 1957
  • Convention on the Elimination of All Forms of Racial Discrimination 1965
  • International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights in 1966
• European Convention on Human Rights
• Inter-American Commission on Human Rights in 1960
• American Convention on Human Rights in 1978
Sources of Human Rights / Enforcement

variety of sources; many kinds of materials, both international and national

- over twenty important multilateral treaties
- legally binding obligations for the parties = states or „soft law“

enforcement different from treaty to treaty

- ECHR: institutions of their own (European Court of Human Rights)
  person alleging a violation of his/her human rights under the ECHR first has to litigate in the national court system;
  he/she will eg have to call upon the Austrian Constitutional Court (VfGH) as the last instance in the national court system before he/she can appeal to the ECtHR
- others: complaints filed with the appropriate political or juridical institutions by states against states
- some complaint systems also include human rights organisations as complainants.
Sources of Human Rights

• Other examples:
  • UN Charter
    • binding upon almost every country in the World
    • various UN sponsored human rights conventions (Int’l Covenants of Civil and Political Rights, Economic, Social, Cultural Rights, Convention on Racial Discrimination etc).

• not legally binding ‘other sources’ (‘soft law’)
  • Universal Declaration of Human Rights 1948
  • international declarations, resolutions, and recommendations regarding international human rights adopted by the UN or other int’l organizations or conferences
  • establish broadly recognized standards invoked in connection with human rights
  • moral authority
  • standards could develop into customary public int’l law, then legally binding
Sources of Human Rights | ‘Soft Law’

- Other examples:
  - 1975 Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accord)
  - UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
  - UN Declaration on the Rights of the Child
  - Standard Minimum Rules for the Treatment of Prisoners
Sources of Human Rights | National Layer

**national statutes** and **Constitutions** – fundamental rights

- Austria: Staatsgrundgesetz 1867 (StGG)
- note: *sometimes limited to citizens*
- **citizens’ rights do not bind the state** with respect to its treatment of foreigners
- strong tendency in interpretation of Austrian fundamental to open these fundamental rights, that were formerly considered rights of citizens only, to non-nationals of Austria

**Jurisdiction by national institutions**

- Example: European Court of Human Rights in Strasbourg
Enforcement of Human Rights

- **key problem**: enforcement of human rights
  - example: **ECHR** before the institutions in Strasbourg (ECtHR)
    - main effect of human rights treaties: reduction of the sovereign powers of the Member States
    - ECtHR reluctant to give the human rights a wider scope and meaning than a national court in the same situation
    - tendency to be rather conservative in the interpretation of human rights
  - Treaties other than the ECHR:
    - generally, much less effective enforcement system
    - example: **Inter-American Court of Human Rights**
    - consent to jurisdiction by a few states
    - generally open only to states as complainants and not to individuals
  - **no enforcement** – heavily rely on the voluntary compliance by states

Introduction to the International Dimensions of Law
Enforcement of Human Rights

• possible actions:
  • within the national systems of the state concerned (direct application of the Member State itself)
  • by other states in the course of international relations (one state trying to directly exercise its influence on the violating state)
  • by international bodies (institutions like int’l courts, commissions or committees created by the human rights convention to deal with complaints by states, human rights organizations and/or individuals)
Chapter 4 | Lesson 1

European Law
European Law | What is the EU?

28 member states:

- 1951/1957: Belgium, Germany, France, Italy, Luxembourg, Netherlands
- 1973: Great Britain, Ireland und Denmark
- Greece (1981), Portugal und Spain (both 1986)
- 1995: Sweden, Finland und Austria
- 2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia
- 2007: Romania and Bulgaria
- 2012: Croatia
3-pillar model before the Lisbon Treaty (07/09)

- **EEC from 1993 EC**
- **ECSC (until 2002) EURATOM**
- common foreign and security policy (CFSP)
- police and judicial cooperation in criminal matters (PJCC)
European Law | What is the EU?


- The 3-pillars-model was abandoned on 1 December 2009 with the entry into force of the Treaty of Lisbon, when the EU obtained a consolidated legal personality.

- TEU- Treaty on the European Union
- TFEU- Treaty on the Functioning of the European Union
European Law | What is the EU?

[Timeline diagram: European Atomic Energy Community (Euratom), European Coal and Steel Community (ECSC), European Economic Community (EEC), European Community (EC), European Union (EU).]

Abb. 5: Timeline of EU/EC-Law
Promotion of peace, its values and the well-being of its people
Area of freedom, security and justice without internal frontiers
Establishment of an internal market
Establishment of an economic and monetary union
Promote the values and interests of the Union in international relations
Contribute to peace, security, sustainable development and the protection of human rights
European Law I Competences of the EU

Principle of limited singular competence

• No general competence for EU organs
• EU-organs can only act within the limited areas of competence assigned it by the treaties
European Law I Competences of the EU

3 different categories of competences (Art 2 et seq TFEU)

- **exclusive competence**: only the EU may legislate and adopt legally binding acts (Art 3 TFEU)

- **shared competence**: EU and Member States are allowed to act – principle of subsidiarity (Art 4 TFEU)

- **supporting, coordinating and complementary competence**: Union supports, coordinates or supplements actions of the Member States (Art 6 TFEU)

principle of *proportionality* in all competences
European Law | What is European Law?

- European law has to be divided into two different types of law:
  - “Primary” European law (Primärrecht)
  - “Secondary” European law (Sekundärrecht)
Reform Treaty of Lisbon

• Reform Treaty of Lisbon (Lisbon Treaty 2007/2009)

• The 3-pillars-model was abandoned on 1 December 2009 with the entry into force of the Treaty of Lisbon, when the EU obtained a consolidated legal personality

• **TEU** - Treaty on the European Union
• **TFEU** - Treaty on the Functioning of the European Union
European Law | Secondary European Law

• *Art 288 TFEU*

**Regulation**
- binding in all its parts
- direct effect in the Member States
- no act of implementation required

**Directive**
- only binding in respect of its targeted and defined aims
- details of implementation left to Member States
Chapter 4 | Lesson 2

European Law | European Organs
European Law | European Organisations

- Council of Europe (Europarat)
- Organisation of Economic Cooperation and Development (OECD)
- European Free Trade Area (EFTA)
- European Economic Area (EEA)
- Organisation of Security and Cooperation in Europe (OSCE)
European Law | The Organs of the EU

- Articles 13-19 TEU, Articles 223 et seq TFEU
  - The European Council
  - The Commission
  - The European Parliament, EP
  - The Court of Justice of the European Union, CJEU
  - The European Central Bank, ECB
  - The European Court of Auditors
permanent president:
Jean-Claude Juncker

High Representative of the EU
Federica Mogherini

Head of State or Government of the Member States + President of the Commission + Permanent President

at least two annual meetings
guidelines for the policies of the EU
The Councils

Council of Europe (Europarat) (CoE):
An advisory international organisation promoting co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation. It was founded in 1949, has 47 member states with 820 million citizens, and is an entirely separate body from the European Union.

European Council (europäischer Rat):
The institution of the European Union (EU) that comprises the heads of state or government of the member states, along with the council's own president and the president of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy also takes part in its meetings.

Council of the EU (Ministerrat):
The Council of the European Union (sometimes just called the Council and sometimes still referred to as the Council of Ministers) is the third of the seven institutions of the European Union (EU) as listed in the Treaty on European Union. It is part of the essentially bicameral EU legislature (the other legislative body being the European Parliament) and represents the executive governments of the EU's member states.
representatives of the member states on ministerial level

rotating presidency

- organ for the protection of member states interests
- decisive legislative organ
- presidency is performed by Member States for 6 month
  - 7-12/2016: Slovakia, next (1-6/2017) Malta
- most important legal acts: Regulations and Directives
European Law I The Commission, Art 17 TEU, Artt 244 et seq TFEU

- 28 members (one per member state): term in office 5 years
- 40 so called Directorates General and Services
- guardian of the Treaties/ motor of the Union
- legislative initiative
- executive competences
• forum of the representatives of the Union's citizens
• consulting and supervisory rights
• co-decision in the legislative process
• direct democratic legitimisation (democratic election)
• number of delegates elected for 5 years: 751
European Law | The Court of Justice (CJEU)

- 28 judges (one per Member State) + 8 Advocate Generals elected for a period of 6 years
- claims or actions of Member States or EU organs
- preliminary reference procedure (Art 267 TFEU): competence of the ECJ for the interpretation of the entire EU primary and secondary law
The European Court of Auditors (Art 285 et seq TFEU)
- Verifies the lawfulness and conformity with regulations of all income and expenditure of the EU, its organs and its facilities

The European Central Bank (ECB) Art 13 TEU, Art 282 et seq TFEU
- Completely independent institution of the EU
- Responsible for conducting the monetary policy (euro area)
Chapter 4 | Lesson 3

European Law | Supremacy &
Direct Effect of EU Law
Direct Effect of EU Law

Van Gend & Loos, 5.2.1963, Case 26/62.

Facts

- Company Van Gend&Loos imported urea-formaldehyde from Germany to Netherlands in Sept. 1960 and were charged with 8% ad valorem duty (Einfuhrzoll) according to the “Tariefbesluit“ (in force since March 1960)
- Within the “Tariefbesluit 1947“, which was applicable when the EEC (now TFEU) entered into force, only a tariff of 3% was permitted
- Van Gend&Loos saw Art 12 TEC (now Art 30 TFEU) infringed because of the increased ad valorem duty with the “Tariefbesluit 1960“
- Art 12 TEC prohibited the levying of new custom duties and the increase of old tariff rates between Member States
Direct Effect of EU Law


Decision of the ECJ (preliminary reference procedure – Art 267 TFEU)

• The judgment of the ECJ established the principle of direct effect of EU law
• The provisions of EU law which establish rights and duties for private persons do not have to be implemented specially by the Member States in respect of national law
  • rights are directly enforceable in national law
  • Conditions for the direct applicability of EU law
    • the provision must grant an unconditional, precisely formulated right to the individual
    • the provision must not grant a sphere of discretion to the Member State applying it
    • the provision does not necessitate any further implementation measures by a Member State
Direct Effect

• ‘effet utile’ of EU law – effet utile interpretation

• teleological method of interpretation

• the ECJ interprets EU law so as for it to develop the greatest possible effect in the attainment of the aims of the EU (EEC) as envisaged by the ECJ
Supremacy of EU Law

Flaminio Costa/ENEL, ECJ 15.7.1964, Case 6/64

Facts:

• Italian Republic: production and distribution of electricity was nationalised = ENEL
• Flaminio Costa: lawyer and shareholder of public limited company Edisonvolta saw Artt 102 TEC (now Art 177 TFEU), 93 (108), 53 (repealed) and 37 (37) infringed by the nationalisation law

Decision of the ECJ (preliminary reference procedure - Art 267 TFEU)

• Definition of the relationship between EU law and the national law of the Member States:
  • Primary and secondary EU law form an autonomous legal order, which enjoys supremacy of application also over later enacted national law
Member State Liability

Francovich, 19.11.1991, combined Cases C-6/90 and C-9/90

Facts

- The Italian Government was obliged to implement EU Directive 80/987 about the minimum protection of employees in the event of insolvency of their employer until Oct. 1983
- Directive 80/987: Member States should ensure that unsatisfied claims of employees to remuneration payment could also be satisfied after the insolvency of the employer
- Italy had not implement the Directive in time
Member State Liability


Facts continued

- Andrea Francovich successfully proceeded against the company he had worked for because of outstanding salary payments, but the execution was without success due to the inability of the company to pay
- Francovich brought an action against the Italian state for the establishment of one of the guarantees for his salary named in the Directive, alternatively for compensation
Member State Liability


Decision of the ECJ (preliminary reference procedure – Art 267 TFEU)

- A Member State can not rely on non-implementation against an individual whereas an individual can
- A Directive which intends to confer unconditional and precise rights upon individuals develops direct effect against Member State (vertical direct effect) but not against private persons (no horizontal direct effect)
Member State Liability


Decision of the ECJ continued

- The vertical direct effect of a Directive against a Member State results in the liability for damage, caused by the non-implementation of a Directive in breach of the Member State’s Duty to implement it

- Right to compensation for damages enforceable against a non-implementing Member State accrues to an individual whose rights are supposed to be granted by a Directive
Member State Liability


Decision of the ECJ continued

Conditions for the claim of Member State liability:

- Directive intends to grant rights for individuals
- These rights must be precisely defined
- No discretion of Member State, no implementation necessary (directive !)
- Causal connection between the non-implementation of a Member State and the damage suffered by the individual
- The infringement of EU law by a Member State must be a ‘qualified breach’ (evident infringement)
Chapter 4 | Lesson 3

European Law | Fundamental Freedoms
The four fundamental freedoms of the TFEU

- The free movements of **goods** (Art 34, 35 TFEU, Art 28, 30 TFEU, Art 110 TFEU)
- The free movements of workers (Art 45 TFEU) + freedom of establishment (Art 49 TFEU) = free movement of **persons**
- The free movements of **services** (Art 56 TFEU)
- The free movement of **capital** (Art 63 TFEU)

fundamental freedoms **prohibit** national rules discriminating against citizens from other Member States and national rules restricting the freedoms but: grounds for **justification** of discrimination or restriction & proportionality test is required:
- protection of health and life
- protection of nature
- protection of national cultural heritage
- protection of industrial and commercial property
Proportionality Test – Sanctions

Proportionality Test

- suitable for achieving the goal
- necessary to achieve the objective
- proportionate in this respect: least intrusive into the freedom but still achieving the goal

Sanctions of breach of fundamental freedom by Member State:

- Treaty violation procedure
- direct (!) application by citizens
- no application of Member State’s law
- Member State liability for damage
Fundamental Freedoms

Commission/Germany (‘Reinheitsgebot für Bier’), 12.3.1987, Case 178/84

Facts

- German ‘Reinheitsgebot’: only barley, hops, yeast and water permitted for production of beer
- No distribution under the designation ‘beer’ from beverages of other Member States when not in accordance to the ‘Reinheitsgebot’
- Commission: infringement of Art 30 TEC (now Art 34 TFEU) free movements of goods
Fundamental Freedoms


Decision of the ECJ (Treaty violation proceeding – Art 258 TFEU)

- ‘Reinheitsgebot’ is a restriction of the free movement of goods
  - Are there any grounds for justification used in a proportionate manner?
    - protection of health?
      - No, beer not brewed in accordance with ‘Reinheitsgebot’ is not per se health damaging
    - Consumer protection?
      - Yes, consumer can have interest in consuming beer in accordance with the ‘Reinheitsgebot’
Fundamental Freedoms

Commission/Germany (‘Reinheitsgebot für Bier’), ECJ 12.3.1987, Case 178/84, [1987] ECR 1227

Decision of the ECJ continued

• complete prohibition of other beer is a disproportional measure (too restrictive)

• but the ECJ protects the responsible citizen and sensible consumer

• Solution: ‘doctrine of labeling’
  • consumer protection is achieved by adequate labeling of the product
  • consumer decides to consume products with certain ingredients or not
Fundamental Freedoms

GB-Inno-BM, 7.3.1990, Case C-362/88

Facts

- public limited company GB-Inno operated supermarkets in Belgium near the border to Luxembourg
- GB-Inno distributed prospectuses to consumers in BE and LU
- Prospectuses which quoted older, higher prices and limited product discounts to a certain period of time were allowed in BE but not in LU
- Luxembourgian Cour de cassation prohibited distribution: infringement of free movement of goods?
Fundamental Freedoms


Decision of the CJEU (preliminary reference procedure – Art 267 TFEU)

- Cross frontier requirement is also fulfilled when the *purchaser crosses the border* or when cross-border advertising for a product takes place.
- Model of the responsible and sensible consumer:
  - her interest in information must be protected
  - is handling the correct information on her own responsibility
- Free movement of goods does *not only protect cross-frontier vendors of products*, but also protects *consumers who cross border* out of their own initiative to purchase products
- **Result:** Luxembourgian courts are not permitted to apply Luxembourgian regulation to cross-frontier product purchases, because it is contrary to the free movements of goods
Harmonisation of Private Law

**Advantages:**

- relative uniformity/similarity of legal positions in the MS
- promotes cross-border market activities
- improvement of consumer protection in MS with weakly developed consumer protection (minimum standard)

**Disadvantages:**

- Directives harmonise only specific legal areas and leave remaining legal questions around selective harmonisation
- Directives interfere within the system of private law of a MS (fragmented area)
- absence of homogeneity within the law established by the Directives
The Directive-Conformable Interpretation of National Law

In case of uncertainties regarding the interpretation of a directive – preliminary reference procedure of the ECJ (Art 267 TFEU)

If the national implementation rule can be interpreted in several possible ways within the context of the national interpretation principles, the judge is obliged to choose the interpretation most closely conforming with the directive

= duty of directive-conformable interpretation of national law
The Directive-Conformable Interpretation of National Law

Verein für Konsumenteninformation, 14.5.1998, Case C-364/96

Facts

• Karthago-Reisen GmbH became insolvent
• 80 customers of this tour operator had to pay twice: Karthago-Reisen GmbH and the hotel keepers in Greece, which used force
• Austrian Verein für Konsumenteninformation brought an action against the insurance of Karthago-Reisen
• district court of Commercial Matters in Vienna – CJEU, preliminary reference procedure (Art 267 TFEU): How to interpret Art 7 of the Package Travel Directive?
The Directive-Conformable Interpretation of National Law


Art 7 Package Travel Directive

• In case of insolvency, the tour operator must prove that the reimbursement of the sums paid by the package travelers and the return journey are secured

Austrian implementation of Art 7

• only the duty to secure the reimbursement and the return journey in a case where the respective services have been paid for but not rendered, was envisaged
The Directive-Conformable Interpretation of National Law


Decision of the CJEU (preliminary reference procedure – Art 267 TFEU)

• factual circumstance of a forced double payment was envisaged by the insolvency assurance required by Art 7
• travelers must have a claim against the insurer for the ‘reimbursement of the paid sums’
• Austrian implementation did not go far enough
• example for an consumer protection-friendly interpretation by the CJEU of EU consumer protection Directives
Vielen Dank für Ihre Aufmerksamkeit!

Ende der Vorlesung
Introduction to the International Dimensions of Law