

EUROPEAN LAW AS A NEW LEGAL ORDER OF INTERNATIONAL LAW (AUTONOMOUS LEGAL ORDER, DIRECT EFFECT AND SUPREMACY)

Please read the following three judgments (mandatory reading):

Case 26/62 ECJ, Van Gend & Loos [1963] (on direct effect of primary law)

Case 6/64, Costa v. ENEL, [1964] Supremacy principle (EU primary and secondary law takes precedence over colliding national law, and autonomous legal order)

Case 11/70 Internationale Handelsgesellschaft, 1970 (EU law takes primacy over national constitutional law)

Please note that Article 177 EEC, as referred to in the rulings, is now - in amended form - contained in Article 267 TFEU. The following questions will be discussed during the seminar

1. What were the facts of the cases?
2. What was the core questions the Court had to answer?
3. In the view of the intervening Governments, how should the Court have answered these questions?
4. In Van Gend en Loos, according to the Governments' view, what was the relevance of Articles 169 and 170 EEC (now 258 and 259 TFEU) in this regard?
5. According to the Court, the EEC Treaty is more than just an ordinary international treaty. Why?
6. EEC law, so the Court establishes, constitutes an own autonomous legal order. What does it mean by this?
7. What does the notion of direct effect mean?
8. Which conditions must a provision fulfil to produce direct effect?
9. Does Article 12 EEC satisfy these conditions?
10. What are the characteristics of the European Union (EU) compared to other international organisations?
11. Where do these judgments place EU law compared to international and national law?
12. Reflect why are we discussing these judgments instead of only codified EU legislation?

Judgments of the Court of Justice and the General Court are available on the website of the European Court at <http://www.curia.eu> or <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>, earlier case law is provided via eur-lex and this link <http://eurlex.europa.eu/JURISIndex.do?ihmlang=en> (sorted by date or case number). Example for case number: Costa/ENEL judgment from 1964 which has the case number 6/64, year 1964 and case nr.6. See for the new citation found on the curia website at p.35. Changes to the court system brought about by Lisbon: <http://curia.europa.eu/jcms/upload/docs/application/pdf/200912/cp090104en.pdf>

The main source for legal research is the Eur-lex portal. EUR-Lex, available at <http://eur-lex.europa.eu/homepage.html>, has now been turned into a portal for all information of a legal

nature about EU law. It contains (amongst others): (i) The Treaties; (ii) The Official Journal (OJ) from 1998 to the current issue (in PDF format): the files found there are true images of the Official Journal and will print just like a page of the OJ (so that page number references can be made without having to check the paper version). New editions of the Official Journal are added daily; (iii) The complete Directory of Union Legislation in Force: the files found there correspond to the contents of the documents listed in the Directory (essentially the L series of the Official Journal); (iv) Some consolidated texts (in HTML format) of a number of EU instruments which have often been modified; and (v) Case law, sorted by date and by number.

Optional Reading suggestions:

Bobek, Michal, The Effects of EU Law in the National Legal Systems (May 30, 2017). Barnard and S Peers (eds.), *European Union Law* (2nd edn, Oxford University Press, 2017) 143-176. Also available at SSRN: <https://ssrn.com/abstract=2977530> (for this week the relevant sections are: 1, 2, 3 and 5)

Morten Rasmussen, Revolutionizing European law: A history of the Van Gend en Loos judgment, *I•CON* (2014), Vol. 12 No. 1, 136–163