



International law in a national legal system (Norway)

- Presumption of conformity of Norwegian domestic law with international law (*Presumsjonsprinsippet*)
- Supremacy of domestic law in case of conflict between domestic and international rule (*Forrangsprinsippet*)



European Economic Area Agreement

- Agreement between EFTA States and EU
- Main part of EEA Agreement (internal market) is made directly effective in Norway through a law
- Secondary legal acts (Regulations and Directives) must be implemented to become directly effective and enforceable in Norwegian legal system



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European Union law: supremacy and direct effect





Court of Justice of EU

- Previously European Court of Justice (ECJ)
 - Now consists of the Court of Justice and General Court (ex-Court of First Instance, CFI)
- Competence:
 - Actions brought by Member States, institutions and persons
 - Preliminary rulings requested by national courts
 - Rulings in other cases provided by the Treaties (Arts 251-281 TFEU)



Case law of the EU Court

- “shall ensure that in the interpretation and application of the Treaties the law is observed» (Art 19.1 TEU).
- Major role in developing EU law and promoting EU objectives
- Final word on the interpretation of EU law



Supremacy of EC Law

Case 6/64 *Costa v. ENEL* [1964] ECR 585

... the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

Case C-213/89 *Factortame* [1990] ECR I-2433

Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125



Supremacy of EU law

- EU law will always take precedence over conflicting sources of law (Costa v Enel)
 - Including where conflicting national law was enacted after EU law (no lex posterior rule), Costa v Enel
- EU law is supreme over all sources of law, also constitutional principles (IHG)



The direct effect of EU law

- *Case 26/62 Van Gend en Loos* [1963] ECR 1
 - Infringement of Art 30 TFEU (then Art 12 EEC)
- Two aspects of ‘direct effect’:
 - EU law provides individuals as well as Member States with rights and obligations
 - Such rights and obligations are enforceable by national courts



Conditions for direct effect as developed by ECJ

- Not all Treaty provisions are capable of having direct effect. Certain conditions must be met.
- Legal provision in question must be:
 - Sufficiently clear and precise
 - Unconditional (provision does not open for any discretion outside judicial control)
 - Not subject to any further implementing measures by EU or national authority



- **Vertical direct effect:**
- Private person versus State

- **Horizontal direct effect** (limited or none):
- Private person versus private person





Regulations

- A regulation has general application, is binding in its entirety and directly applicable to all Member States (Art 288.2 TFEU)



Directives

- Binding as to the result to be achieved
- May be addressed to some, not all, Member States
- Leaves to the national authority the choice of form and method (Art 288.3 TFEU)
 - Minimum harmonization directives
 - Full harmonization directives



- Regulations may have direct effect
- Directives?
 - As a starting point, not directly applicable as they require implementation (Art 288 TFEU)
 - May have direct effect, assuming certain criteria are satisfied (Van gend Loos criteria)
 - Only vertical direct effect



Indirect effect - principle of harmonious interpretation - of Directives

- National law must be interpreted in conformity with EU Directives.
 - «national courts are required to interpret their national law *in the light of the wording and purpose of the Directive* in order to achieve the result referred to in [Art 288 TFEU)» (Van Colson)