

## Appendix 2 – Term Paper

**Master of Arts XXX**  
**Prof. Dr. Stefan Meyer**  
**Winter Semester 2009/2010**

### Final Examination

- Please answer both questions below.
- Use about 1 hour for each of the 2 questions.
- Admitted materials: All course materials from the ‚Foundations‘ folder and own notes as well as dictionaries.

### Questions:

- *Your answers to question 2 can be rather **short**. Nevertheless, they should come in complete sentences.*
1. Some scholars have stated that Article 234 EC (267 TFEU) is one of the most influential norms with respect to the development of the special character of EU Law. Discuss that opinion on the background of the case law of the ECJ establishing the EU as a unique legal community.
  2. Analyse the excerpts of the Factortame I case printed below and answer the following questions:
    - 2.1. What are the reasons given by the Court for its decision? Please state them in your own words.
    - 2.2. How does this judgement fit in with the established case law of the ECJ?
    - 2.3. The decision raised considerable concern among the British legal profession. What makes it problematic from the perspective of national law?
    - 2.4. How does the decision affect the position of British courts vis-avis the British government?

Excerpts from the judgement:

*17 It is clear from the information before the Court.... that the preliminary question raised by the House of Lords seeks essentially to ascertain whether a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law [i.e. that British courts do not have power to grant interim relief against the crown], must disapply that rule .*

*18 For the purpose of replying to that question, it is necessary to point out that in its judgment ... Amministrazione delle finanze dello Stato v Simmenthal SpA .. the Court held that directly applicable rules of Community law "must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force" .. and that "in accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures ... by their entry into force render automatically inapplicable any conflicting provision of ... national law" ...*

*19 In accordance with the case-law of the Court, it is for the national courts, in application of the principle of cooperation laid down in Article 5 TEC (= Article 10 EC; now Article 4 TEU Lisbon), to ensure the legal protection which persons derive from the direct effect of provisions of Community law.*

*20 The Court has also held that any provision of a national legal system and any legislative, administrative or judicial practice which might impair the effectiveness of Community law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent, even temporarily, Community rules from having full force and effect are incompatible with those requirements, which are the very essence of Community law (Simmenthal).*

*21 It must be added that the full effectiveness of Community law would be just as much impaired if a rule of national law could prevent a court seised of a dispute governed by Community law from granting interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law . It follows that a court which in those circumstances would grant interim relief, if it were not for a rule of national law, is obliged to set aside that rule .*

*22 That interpretation is reinforced by the system established by Article 177 TEC (= Article 234 EC, 267 TFEU) whose effectiveness would be impaired if a national court, having stayed proceedings pending the reply by the Court of Justice to the question referred to it for a preliminary ruling, were not able to grant interim relief until it delivered its judgment following the reply given by the Court of Justice .*

*23 Consequently, the reply to the question raised should be that Community law must be interpreted as meaning that a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law must set aside that rule .*