

TEACHING NOTE

1. Teaching objectives: Why are we teaching this case?

By teaching this case both, competences regarding the substantive law (EU law), as well as transversal competences, are trained.

Substantive Law:

- The case deals mainly with fundamental freedoms, particularly the freedom of establishment. The fundamental freedoms are one of the major topics of EU Law and bear great relevance in practice and in academia. In Germany they are most relevant for examinations.
- One of the major difficulties of the case is to recognizing that a private party (German Fishermen's Union) is acting. This raises the question, if private parties are bound by fundamental freedoms which has not yet been answered by the ECJ conclusively and which opens up room for discussion and legal argumentation.
- The case is embedded in a preliminary reference procedure. This procedure is of rising importance. Most lawyers will be confronted with a preliminary reference at some point in their professional life (either as judges, or advocates, or even simply when analysing a case which was delivered by the ECJ upon a preliminary reference), there is therefore also a rising need to teach this procedure at university.

Transversal competences:

Students get the possibility to:

- train their legal argumentation skills by balancing the right to collective action of the GSU with the freedom of establishment of Viking, more generally to balance aspects of social welfare (protection of workers, social policy of the EU, improvement of working and living conditions) and economic freedom (economic purpose of the union, free movement of goods, persons, services and capital).
- train their skills to summarize facts and legal arguments in a brief and comprehensive manner.
- train their skill to formulate questions to the ECJ and demonstrate that they have understood that the ECJ is only competent to interpret EU law, not national law, more generally have understood the hierarchy between the ECJ and national courts and the hierarchy between national and EU law.

2. Teaching process: How to teach it?

[**Note:** This case study is suitable for various different types of class room settings. It may be designed as a take home assignment followed by a presentation of the solution by the students in class with a subsequent discussion of the questions; it may be handed out as an open-book exam; it may be incorporated in an ongoing lecture on EU Law etc.]

Class room setting: 3 – 4 hour en bloc session

Teaching Process:

- Make available the facts of the case and annex to the students. This can be done through an online learning platform (e.g. Moodle), via E-Mail or by distributing paper copies. The facts of the case may be made available either before or at the beginning of the class. Making the materials available to students beforehand has the advantage that students may be asked to familiarise themselves with the facts of the case and the accompanying materials beforehand and the work on the solution can start at the beginning of the class. However from experience, many students do not prepare themselves adequately and are not capable of participating in class in this case. Alternatively, students can be assigned a fixed reading time at the beginning of the class, e.g. 20 minutes before starting to work on the solution of the case.
- Introduce the task one after another to the students. Ask students to summarise the tasks in their own words. By doing so you can check if they have understood the tasks. If there is a misunderstanding, clarify. Answer any question that comes up regarding the tasks.
- Depending on the size of the group, you may either choose to let students work on their own /or in small groups on the task and present their solutions afterwards, or you may want to develop the solution together with the entire group.
- When developing the solution together you should stimulate the discussion by precise questions and by guiding the students through the solution to make sure that the discussion stays focused. If the students are working on their own you can walk around and stimulate the work of the individual groups by asking the same questions.
- For task 1, the following question might be helpful as guidance:
 - Which provision of the Treaty of Lisbon could be violated?
 - What is the scope of application of Art 49 TFEU?
 - Are subsidiaries also protected by Art 49 TFEU?
 - Is there a restriction of the rights guaranteed to Viking under Art 49 TFEU?
 - What constitutes such a restriction?
 - Who is restricting Viking's rights?
 - Can restrictions by a private entity, such as the GSU, constitute a restriction of Art 49 TFEU?

- Is the restriction of Art 49 TFEU justified?
- Which rights of the GSU could be justifying a restriction of Art 49 TFEU?
- How should the conflicting rights be balanced?
- Is the balance proportionate?
- For task 2, the following question might be helpful as guidance:
 - Who is responsible for the interpretation of EU law?
 - Can you think of a provision in the TFEU according the prerogative of interpretation to a certain body?
 - Which procedure is there to assure that national courts interpret EU law correctly?
- For task 3 a), the following question might be helpful as guidance:
 - What are the admissibility criteria for a preliminary reference procedure according to Art 267 TFEU?
 - What does Art 267 TFEU state? (Read provision together)
 - Are there any unwritten requirements?
- For task 3 b), the following question might be helpful as guidance:
 - When is a national court obliged to refer a question to the CJFU?
 - Does Art 267 TFEU constitute such an obligation?
 - Are there further obligations established in the case law of the CJFU that you can recall?
 - Are there any exceptions?
 - Do any of these obligations/exceptions apply to the case at hand?
- The situation varies for task 3 c) as it requires students to deliver a practical task. This is best done in small groups. Make sure to ask students in advance to bring a laptop (or similar device) so they can draft the module solution. If necessary repeat with the students the points that need to be included in an order for reference. Make sure students use the template in the annex. This task may also be designed as a take home assignment which needs to be handed in and may be graded.

