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PRACTICAL CASE-SOLVING IN EUROPEAN LAW

Introduction to legal case-solving

In everyday life, most lawyers are dealing particularly with practical cases. Therefore, legal education cannot be limited to equip the young lawyers with theoretical knowledge. A lawyer must understand, handle and solve an individual case exactly and correctly. Hence, for a long time in many European states the methods and techniques of legal case-solving form an important part of the legal education at university. Numerous rules and customs are taught, which in some cases originate from the *national legal tradition* or are necessitated by the *dogmatics* of the relevant field of law, but mainly follow the *laws of logic and of legal argumentation* and therefore apply independently of the individual field of law or legal order. The most important are dealt with in this paper. Furthermore, general recommendations are given for a thorough and efficient case-solving. Your personal working style or the special features of the individual case may advise to deviate from them on an individual basis. The paper also contains guidelines for the formal design of the case solution. They mainly refer to the conventions among German-speaking lawyers but are also useful for the work of lawyers in other legal orders.

A. The methods and techniques of legal case-solving

I. The analysis of the facts and question of the case[1]

1) The apprehension of the facts of the case

At the beginning of every case-solving grasp at first carefully the facts of the case (the "story"). What exactly happened? When and where? Who is involved? In your future daily routine, this question will often cause problems, because not all necessary information may be available, some information may be doubtful or you may have the impression that important information is withheld from you. Furthermore, it is difficult to extract the relevant from the abundance of information (not everything the client tells his lawyer, is important for the case...). When solving cases at university, however, the facts are clear. You must base your work on the *facts of the case exactly as they result from the case description*. Suppose that this text contains all information, which is necessary for the solution of the case, and no (or few) superfluous indications. Try to avoid arbitrary supplementation or alienation![2] There are rarely any reasons for doubts. If an interpretation of the facts of the case is necessary, choose the interpretation that is the closest to the general experience of life. Do not develop any fantasy in order to make the case more interesting and do not try to know the facts better (like: "There is no 'freedom boulevard' in Berlin, so the story did not happen as reported in Berlin but in Rīga"). Be careful if the facts of the case seemingly correspond to those of a known court decision. They might have been modified deliberately in order to lead you to a different solution!

Pay attention to the details of the facts of the case. For instance, it is important if someone wants to bring an action or has already brought an action and who wants to sue whom and when. It is recommended to *read the case description repeatedly*; at the first review, important details are easily ignored. If the facts are complicated, it is advisable to draw a sketch, which outlines the involved persons, the chronology of the story and certain events (e.g. payments). This diagram must be prepared carefully. It must show all relations and correlations between persons, payments, applications etc correctly and precisely. The making of the sketch already presents an advanced stage of the apprehension of the facts of the case. In the fields of European law and public law, however, complicated cases that require sketches are less common than in civil law.

Try to see the facts from the perspectives of the involved persons and their desires and interests. Pay attention to the objections and arguments mentioned in the case description. Often they will lead you to the legal questions, which have to be discussed. Caution, however, if you think to recognize classical legal problems: Only the data in the case description are decisive for the case solution. Avoid reading the problems, which are familiar to you, into the facts of the case. You should also be cautious with regard to the legal terms used by the "common citizen" involved in the case because it is not sure that they are used correctly; to find out about this is part of your task.

2) The working out of the question of the case

It is decisive for the merit of your work that your solution corresponds exactly to the question of the case. Only this question is to be answered. Discussions on other topics, which you know about but which are not relevant, are not just superfluous, but may damage the result considerably. In examinations, they may lead to a worse grading than the non-response to a question, because no examiner likes it if one disregards his question, and no one likes to waste his time with the reading of obviously irrelevant remarks. The same is true in legal practice: The client expects his lawyer to see to his request and not to "impress" him with irrelevant knowledge. Judges are disgruntled when lawyers shower them with blabbing that is unimportant for the proceedings. The disregard of that central basic rule is one of the heaviest and nevertheless a frequent mistake in case-solving.

Therefore, do not examine whether legal remedies are admissible, if the text asks about the situation in substantive law only (e.g.: "Does the new statute in the member state X comply with European Union law?" or: "Have the economic fundamental freedoms of Mr. B been violated?"). On the other hand, do not discuss the situation in substantive law, if the text asks about the admissibility of legal remedies (e.g.: "With which instruments can Mr. C fight against the administrative decision?"). Do not examine the possible violation of all fundamental freedoms, if the question is about a specific freedom - even if there should be interesting

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[1] See also *Schwerdtfeger*, Öffentliches Recht in der Fallbearbeitung, 11th edition 2003, no. 774 ff.; *Butzer/Epping*, Arbeitstechnik im öffentlichen Recht, 3rd edition 2005, p. 12 ff.; *Bringewat*, Methodik der juristischen Fallbearbeitung, 2007, no. 40 ff.

[2] See also *Bringewat* (note 1), no. 102 ff.

problems concerning other ones. Finally, do not check all conditions of legality, if you are specifically asked if the fundamental freedoms have been violated.

It is simply not possible to solve a case successfully without *working out exactly the question of the case*. Therefore, you should allow the necessary time for this step and reconsider the result several times. If the case description ends with a general question (e.g. "How is the legal situation?"), you must identify the actual question of the case with special regard to the information given just before the question is formulated. Pay attention particularly to a possible special notice ["Bearbeitervermerk"]. It delimits the examination, steers it into a certain direction or is supposed to prevent misunderstandings.

3) Brainstorming and comprehension test

It is advisable to gather spontaneous ideas on a separate sheet of paper during the analysis of the facts and question of the case (brainstorming).[3] That prevents that important thoughts get lost. You should resist, however, to the temptation to busy yourself already now with these ideas. Before you have not completely apprehended and understood the facts of the case, and before you have not conclusively identified the question of the case, you cannot know if they are indeed relevant. You might walk right into a trap where you can lose a lot of your precious time.

Before you proceed to the solving of the case, you should bring to mind the facts and question of the case once again. For this purpose I recommend a simple test: Attempt to summarise (not to retell!) both, facts and question, confining yourself to the essential, in few sentences. You will soon notice that this is not easy and that the attempts of different persons may differ considerably. Possibly, you should repeat this step. It is not reasonable to start the actual solving process before this step has led to a satisfactory result.

II. The drawing up of a draft outline

In order to guarantee that your solution precisely follows the question of the case, you must first set up a framework in the form of an exactly tuned outline and later discuss all questions at the scheduled place. The *structure* of the outline *will result primarily from the case question and from the dogmatic structures of the field of law* and only secondarily from the main topics or problems of the case. Normally, a certain basic structure is compellent. For instance, if the case question is about the chances of success of a legal action, the solution is generally divided into "Admissibility of the action..." and "Merits of the case...". If it is about the constitutionality of a statute, in many legal orders the solution is divided into "Formal constitutionality ..." and "Substantive constitutionality..." If it is about the compatibility of a directive or regulation of the European Union with primary law, it is divided into "Lack of competence", "Infringement of essential procedural requirements", "Infringement of the Treaty or other substantive law" and "Misuse of powers" (cf. the enumeration of the grounds of action in art. 263 sub-sect. 2 FEU Treaty[4]). If it is about a possible violation of economic fundamental freedoms of a citizen of the Union, it is divided into "Sphere of protection", "Encroachment" (or "Interference") and "Illegality of the encroachment (no justification by the fundamental freedom's limits)".[5] Note that the dogmatic structures vary in the various fields of law and in particular in the various national legal orders. Therefore, the examination schemes are very different, for example, in French, German and English administrative law.[6] The law of the European Union is based in its fundamental dogmatic structures on the French legal tradition (cf. in particular art. 263 sub-sect. 2 FEU Treaty) but has been strongly influenced by German law.

The *quality of the case solution will strongly depend on its composition (structure)*. It reflects your skill to relate reality (the facts) and normativity (the law) according to the principles of logic and to the dogmatics of the relevant field of law. Only an accurate structure provides for an easy orientation, allows following the analysis step by step and enables the reader to avoid misunderstandings and fallacies. Therefore, in most cases a corrupt composition does not represent an (unimportant) error in form but a (grave) intellectual defi-

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[3] See also *Bringewat* (note 1), no. 108 ff.

[4] Formerly art. 230 sub-sect. 2 EC Treaty.

[5] See the diagrams 2 - 7 from the course "EC Internal Market Law", Spring Semester 2008, http://home.lanet.lv/~tschmit1/Lehre/EC_Internal_Market_Law.htm.

[6] However, the most important rules concerning the composition of a case solution are independent from the field of law or the national legal culture because they result directly from the doctrine of legal methodology. For example, in principle you must first discuss the admissibility of a legal remedy and then the merits of the case, first the relevant formal questions and then those of material (substantive) law, first the preconditions and then the consequences of a norm, first the more special and then the more general norms.

ciency, implying a lack of knowledge of the law or (even worse) missing logical abilities. Serious defects normally make the case solution useless. By contrast, an elegant and consistent structure may conceal flawed reasoning and insufficient consideration of relevant literature. Therefore, it is advisable to learn the appropriate basic structures for case solutions in the most common constellations when studying a new field of law.

Most cases will require a complicated construction of the solution. Therefore, you must *plan the presentation*. Create at first a draft outline on a separate sheet of paper. There you have to note every single question, which is to be examined, at the correct place. In so doing you will *recognize at an early stage pseudo problems*, i.e. problems, which might bear upon the case in a large context but which do not need to (and therefore must not!) be discussed to answer the case question. Furthermore, the draft outline facilitates to orientate yourself within the abundance of information and ideas, to focus on the central issues, to develop a well-structured solution and to avoid all redundant deliberations (and, thereby, superfluous writing). Without this important preparatory measure, simple cases cannot be solved in an elegant way and complicated cases cannot be solved at all. Anyone who believes that he can start writing down the solution immediately after the analysis of the facts and question of the case, is condemned to failure. Nevertheless, the draft outline should be preferably short since it conduces to the writing down but cannot replace it.[7]

When preparing a course paper or master thesis, compile the draft outline with a computer and synchronise it constantly with the latest state of your knowledge and reflection. From time to time, you will have to reconsider the emphasis.

III. The systematic solving of the case on the basis of the draft outline

1) Early focusing on the main topics, examination of the case, time management

The draft outline must specify *all aspects of the examination, all relevant legal norms and all problems*, and it must specify them all *at the correct place* (examples: no discussion of aspects of the merits of the case in the chapter about the admissibility of remedies, no discussion of the limits in the section on the sphere of protection of a subjective right). It is advisable to focus early on the main topics. To achieve a higher quality of the case solution, it is important to have the right main emphasis. Most cases centre upon a few crucial questions; all other aspects should be treated shortly. At university, you will often find some clues in the presentation of the facts of the case that indicate the possible main topics; see in particular the presented opinions and arguments of the parties. In the practical everyday life of a lawyer, it will be much more difficult to spot them. Furthermore, it may happen that the client or the litigants present new information that makes it necessary to reconsider your ideas.

The intellectual process of solving the case must be strictly linked to the draft outline, in order not to forget important aspects, to see things constantly in their context, to have an overview on the achieved results (they must be noted at the relevant places in the draft outline) and especially to avoid blind alleys and dead ends or loosing much time with unimportant issues. As far as the dogmatic context allows it, you should split up complex problems into separate questions, which may be easier to handle. Furthermore, your solution will be more exact. By the way, this is an effective method to find the mistakes in the case solutions of others. - As a matter of course, the draft outline is to be updated constantly!

Often it is useful to plan the amount of pages or time you want to spend on the individual aspects of the examination and to note it down in the draft outline. Using this basic method of effort and time management you will enable yourself to work more efficiently. However, check frequently if the estimated total expenditure does not exceed the (still) available resources. If you get under time pressure, you should correct your plans at an early stage in order to avoid that later important parts of the case solution will be missing.

2) Examination schemes

Now it is time to make use of examination schemes, as they are widespread in some European countries.[8] Many textbooks and other works of legal education for students include them. You can also find them in many materials in the internet. In some countries, there even are extensive collections of examination

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[7] In order to reduce the writing effort to the minimum, you may use keywords and abbreviations such as "(+)", (-)", "(√)" or "DISP." (for "in dispute").

[8] See, e.g., the diagrams 2 - 7 from the course "EC Internal Market Law" (note 5). See also the diagrams which will be distributed in this course.

schemes for classical or frequent case constellations.[9] In some English-speaking countries, comprehensive examination schemes are not common. There are, however, short examination schemes confined to individual aspects, which serve the same purpose and are called "tests".[10]

Examination schemes have the function of "check lists". They show what you have to examine and where you must integrate the examination into the comprehensive solution. They reflect the dogmatic structures of the respective field of law and allow a line of thoughts that exactly corresponds to the legal dogmatics and which every expert can easily follow. They usually build on a common understanding of the basic dogmatic structures that has evolved in a long tradition of science, practice and jurisprudence and is stable for decades. Often it is useful to orientate the draft outline of the case solution by an appropriate examination scheme (in particular, when you have to examine if an appeal at the court would be successful or if the economic fundamental freedoms of a certain person have been violated). But be careful only to use schemes from reliable and competent sources: Every logical or dogmatic mistake in the scheme will inevitably result in a wrong or wrongly structured case solution. Therefore, in some countries students who tend to work with cheap but bad books or lecture notes of incompetent authors fail the exams more frequently. On the contrary, the best young lawyers, after a critical analysis of the opinions of authors, lecturers and courts, will develop their own schemes.

In European Union law, the common understanding of dogmatic structures is less developed than (usually) in national law. Here the differences between the national legal cultures and traditions take effect. Therefore, examination schemes are less common and more diverse and you enjoy wider latitude of discretion. Note, however, that by following a particular examination scheme you may affiliate with a particular basic dogmatic understanding. You should consider this when choosing the scheme.[11]

Examination schemes are *only auxiliary means for the case-solving in your mind*, that is in preparation of the writing down. The final text of your case solution will necessarily differ in detail from the structure or not mention some aspects listed in the schemes because even the most appropriate examination scheme will inevitably deal with some details that are irrelevant or completely unproblematic in the given case. Unproblematic aspects must be mentally considered but not discussed in the writing. Therefore, normally the structure of your text will be less complex than indicated in the schemes.

3) Auxiliary expertises[12]

It may happen that you are asked if a certain legal remedy would be successful and that it turns out that it would be inadmissible under the given circumstances but that there are details in the facts of the case that indicate that it might be well-founded. In some case constellations it may even not be clear if the remedy would be inadmissible because a relevant question is not yet settled in jurisprudence and legal doctrine. Then you must first answer the actual case question and second proceed to a so-called auxiliary expertise ["Hilfsgutachten"]. The answer to the case question will be that the legal remedy would not be successful because it would be inadmissible. In the following auxiliary expertise, you will examine the well-foundedness of the remedy (i.e. if the remedy would be successful if it was admissible).

The most common reason to write an auxiliary expertise is that an important problem concerning the admissibility of a legal remedy is still controversially discussed in legal doctrine and jurisprudence but has a decisive impact on the case. Then the conclusion of the case solution is not obvious. It happens that in such cases within a panel of judges a judge-rapporteur (reporting judge) has to prepare the decision of the court. He must adapt his case-solution to the fact that his colleagues might not follow his reasoning that denies the admissibility. In the practice of the European Court of Justice there have been judgements affirming the admissibility of legal actions clearly contra legem.[13] So the judge-rapporteur must be prepared to discuss the

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[9] See, for example, *Nemitz*, Die Schemata, vol. 1 - 3, 5th/7th edition 2006 (on almost all important case constellations in German private, criminal, public and procedural law.

[10] See, for example, the "proportionality test", which usually is the most important part of an examination of a possible violation of fundamental rights or freedoms.

[11] For example, those who use my diagrams on the fundamental freedoms (note 5), insinuate that they follow the new common approach that aims to build up a consistent dogmatic understanding and takes into account the convergence of the fundamental freedoms and the strong structural parallels between fundamental freedoms and fundamental rights. This approach is popular among continental European but not among British experts of European law. If you dislike it, you must not use my diagrams...

[12] See also *Butzer/Epping* (note 1), p. 65 ff.

[13] See ECJ, case C-68/95, T-Port, no. 59, allowing legal actions against Community institutions for failure to address acts to *third* persons in open disregard of the clear and definite wording in art. 232 sub-sect. 3 EC Treaty [today: 265 sub-sect. 3 FEU Treaty].

well-foundedness of the action with his colleagues even if he thinks that it is irrelevant because the action is inadmissible.

However, these cases are not very frequent. There is a high risk that you think that an auxiliary expertise is necessary because you have wrongly denied the admissibility of the remedy. Before proceeding to write an auxiliary expertise you should review thoroughly the entire case solution (in particular its structure). If a legal remedy is *not yet* admissible because first some previous steps have to be taken (in particular preliminary proceedings or legal actions at other courts), you can avoid an auxiliary expertise if you affirm the admissibility of the remedy but emphasize that first these steps have to be taken.

If the case raises questions that cannot be integrated into the solution you are targeting, you must not discuss them in a pretended "auxiliary expertise". Probably your solution does not exactly answer the case question, is based on a wrong understanding of the facts of the case or has serious structural deficiencies. It also may happen that the facts of the case remind you to well-known legal problems that you have learnt at university but that are not actually relevant for the solution. If you notice that your case solution does not consider important details of the facts of the case you must once again review it. When solving cases at university you can be sure that the facts are confined to the necessary data.[14] In the practical everyday life of a lawyer, concerning the facts presented by the clients, this is, however, not evident...

4) Literature research

When preparing a course paper with a case-solution, the draft outline (see above, A.II./III.) can help you to concentrate and confine the literature research on what is needed for the solution of the actual case. Thus, you may avoid many unnecessary working hours in dusty and over-crowded libraries. This especially applies to countries with floods of legal literature like Germany, France or Britain. Mostly you will first have to familiarize yourself with the subject by means of textbooks and commentaries. If you do not yet understand the basics, difficult specialised literature on special problems will confuse you. Therefore, *scrabbling in literature* already on the first working day surely is the *wrong way*. The same applies to making copies before you know what you will need them for. An impressive pile of copies alone does not bring any progress towards the solution of the case - even if one has invested so much time and money in it. Latvian students should bethink of a virtue on which legal education in Latvia, advantageously, puts emphasis upon: that they are not only trained to read but to *think*...

In the field of European Union law, there are some bibliographical databases, which provide for quick and easy information about the existing specialist literature. See in particular the databases *Rave* (University of Düsseldorf)[15] and *European Integration Current Contents* (NYU School of Law[16]), which inform about articles in legal journals. See also national databases like the *Leitsatzkartei des deutschen Rechts* on DVD[17], which lists all articles and judgements published in important legal journals in German language. See finally the comprehensive general bibliographical databases like the *Karlsruher Virtueller Katalog (KV),*[18] which provide for a quick overview on all specialised books in most important libraries in the world.

IV. The writing down

1) No start of the writing down before the case is completely solved

Do not start the writing down before you have • solved the case completely in your mind, • noted down all results at the right places in your draft outline and • decided in detail on the amount of pages or time you will expend on the individual sections of your case solution. The temptation to start the writing down at an earlier stage is immense, but it bears the risk (if not the certainty) to loose a lot of time and energy in superfluous efforts. Under no circumstances should you start the writing before you have precisely set the course and taken all decisions which might influence the line of thoughts in your work. Be cautious that you do not reach dead ends and formulate parts that you later must delete!

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[14] Therefore there is a simple trick to avoid this situation: Just mark all facts that you have taken into consideration with a small hook (√) in the sheet containing the facts of the case.

[15] Http://www.uni-duesseldorf.de/HHU/fakultaeten/jura/rave/en.

[16] Http://centers.law.nyu.edu/jmtoc/index.cfm.

[17] Published by the publisher C.H. Beck (www.beck.de) and freely accessible at many university libraries.

[18] Http://www.ubka.uni-karlsruhe.de/kvk/kvk/kvk_en.html.

2) Rigorous focusing on the main problems in the final product

Make sure that your final product rigorously focuses on the main problems of the case because this will be crucial for its success. Avoid an imbalanced presentation, which deals too extensively with the first and too shortly with the last topics (or too extensively with the topics you know and too shortly with those you are not familiar with...). *Avoid any stereotyped trudging through the standard examination schemes*. This practice is widespread among students but does not do justice to the particularities of the individual case. It indicates a lack of sovereignty in legal case-solving. Avoid in particular any unjustified lengthy remarks on the admissibility of legal remedies or on formal and procedural aspects. Usually it is not here that you will find the main problems of the case.

Not every topic noted in the draft outline (i.e. not every idea or thought) must have its own headline in the final text. It may be advisable to bundle several items under one (adequate!) common headline (e.g. "other conditions of admissibility") in order to simplify the structure. Usually it is convenient if the weight attached to the various aspects is reflected in the headlines and thereby evident to any experienced reader. You may also express your weighting by carefully selecting adequate formulations that help avoid superfluous words. This, however, is a very professional way of legal case-solving, for which you need a highly developed sense of language, a deep understanding of the dogmatics of the relevant field of law and intensive exercising.

3) Exact reasoning, comprehensible line of thoughts, analytical style of writing

a) Cultivate an exact and accurate reasoning, which provides for a consistent and comprehensible line of thoughts! It will already manifest in well-coordinated precise headlines, which do not only inform about the subject but also specify the exact intellectual and logical context. However, at first, the skill to generate such headlines must be trained and the necessary sense for grammatical contexts must be developed. In particular, you need a strong sense of declensions and of the purposeful use of prepositions. By the way, in some languages it is more difficult to express your thoughts precisely than in others. In the Latvian language, with its complicated grammar, a high degree of exactitude can be - and therefore must be - achieved.

b) Use short introductory sentences at the beginning and short concluding sentences at the end of every section in order to illustrate the significance of the relevant part in the general context of the examination. This will make it easier for the reader to follow your line of thoughts.[19] Furthermore, you will benefit from it because you may easily verify if you have examined the right issue.[20] You should, however, avoid meaningless stereotyped explanations (such as "It is to be examined whether...") or justifications because this might cause the impression that your line of thoughts and the structure of your work are not at all evident.[21] The introductions to the case solution and to its main parts must be formulated with special accuracy because they are crucial for the orientation of the reader. They should both trace out the dogmatically set basic structure of the examination and refer to the facts of the actual case (for example: "The prohibition to sell the liquor Cassis de Dijon in A-land violates the fundamental freedom of Mr. A guaranteed in art. 28 et seq. FEU Treaty, if it encroaches on [interferes with] the sphere of protection of this freedom and that encroachment is not justified by the fundamental freedom's limits").

Legal case-solving is essentially characterized by the use of a certain style of writing and reasoning that is vital for every serious expertise: the so-called "Gutachtenstil" (analytical style of writing and reasoning).[22] Strictly speaking, it is a style of reasoning. It is deeply reflected, however, not only in the structure of the case solution and in the line of thoughts but also in the style of writing. By its nature, a legal analysis must be categorically neutral, *open for all possible results and exhaustive* (at least it must pretend to be...). Therefore, many eventualities are taken into consideration and discussed, even if in some cases this will lead to blind alleys (this may also be an important result of the examination). Correspondingly, *every section of the examination begins with a specific question and ends with the result - and not the other way around*. Furthermore, the formulation of the question will be deliberate and open, in most languages in the subjunctive mode or

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[19] Special tip: Give your case solution to intelligent *non-lawyers*, e.g. your parents, your girl-friend or your boy-friend. If they do not understand what it is about, something is badly wrong. Excellent lawyers are able to explain even the most difficult legal issues to the most simple fellow citizen...

[20] It is, for example, embarrassing if the concluding sentence does not actually answer the question that the introductory sentence has raised...

[21] You must, however, explain your approach if you build your examination upon a basic structure, which is incompatible with the prevailing doctrines in the relevant field of law. You have the right to do so - even as a student and without regard to the attitude of the lecturer. But you must at least explain your reasons in a footnote in order to make clear that it is not ignorance but scientific reasons that motivate you to deviate from the common practice. In case that you follow a particular doctrine you should declare and explain it.

[22] Cf. *Bringewat* (note 1), no. 201 ff.; *Valerius*, Einführung in den Gutachtenstil, 2nd edition 2007.

another mode indicating that the following is taken as hypothetical (for example: "The fundamental freedom of Mr. A guaranteed in art. 28 et seq. FEU Treaty *might* be violated. This would be the case if..."). There is a reverse style, which is also common among lawyers: the so-called "Urteilsstil" (decisive style of writing and reasoning). This style, however, the typical style of judgements and other court decisions, is principally reserved to the judge. A judgement will first announce the result (because this is what the parties are most interested in) and afterwards give reasons. Often, the reasoning can be limited to certain aspects, what is usually not the case in an analytical expertise[23] For this kind of reasoning the indicative mode is the appropriate grammatical style ("The fundamental freedom of Mr. A guaranteed in art. 28 et seq. FEU Treaty *is not* violated because..."). - Both styles, analytical style and decisive style, must be continued when discussing subordinate aspects of the case.[24] In case of a very complicated examination, this may require advanced linguistic and logical skills.

Although the analytical style of writing and reasoning is an essential feature of legal case-solving, the case solution cannot be edited completely in this style. In order to have the right emphasis, it will be necessary to reserve this style to the more important aspects of the case. For unimportant details that you bring up shortly for reasons of legal thoroughness only, you should use the decisive style - even in a case solution. It does not make sense to stretch out deliberately the examination of unproblematic aspects - you are not paid for boring your colleagues and clients. This applies in particular to unimportant parts or subparts of important problems. Sometimes, the choice between the analytical and the decisive style will demand a commanding knowledge of the subject matter.

c) You should reveal, which legal methods you are applying, in order to allow the reader to adapt (legal interpretation, analogy or development of law? Teleological or contextual interpretation?). Arguments based on comparison of laws are difficult to classify - although in integrating Europe they are more and more important. Comparison of laws is not a legal method in its narrow sense. It is rather a method of legal politics. If there is a nice solution for your legal problem in another legal order, this may cause you to demand to change the law but does not necessarily mean that you should interpret the actual norms in your legal order in that way. Often, however, arguments based on comparison of laws may serve as important auxiliary arguments within a teleological or historical interpretation. Besides, they represent ideas and aspects that should be taken into consideration. Moreover, in European Union law they play a decisive role for the judicial development of law. The "discovery" of new unwritten general principles of Union law is usually grounded on considerations drawn from comparison of laws.

Make sure that within the subsumption the individual sentences are logically connected. Do not assume anything as self-evident. Unmentioned premises and skipped intermediate steps will make the reader sit up and look for the shortcomings of your solution at exactly this point. (You should do the same when listening to the presentations of others...) Not only lawyers but also attentive non-lawyers might react in this way. You should also avoid a very common but clearly recognisable mistake: Do not try to sell possible but non-compellent conclusions as compellent logic - it would provoke protest!

4) Case-oriented discussion of scientific disputes[25]

When solving cases at university, usually the discussion of scientific disputes is in the limelight. This applies in particular to the big member states where, due to the great number of legal scholars, numerous controversies have evolved in every field of law. The same is true, of course, for European law. In the daily life of a legal practitioner, however, also in European law, scientific disputes are of smaller importance.

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[23] For example, unlike an expert opinion, a judgement does not have to pay attention to all preconditions of a claim if it is certain that one of the conditions is not fulfiled. - For this reason, you should affront offensively every "case solution" submitted by colleagues, in particular the advocates of the other side, that is written in the decisive style: You can be almost sure that they are trying to hide important shortcomings and weak points in their reasoning.

[24] An example of the analytic style: "The fundamental freedom of Mr. A guaranteed in art. 28 et seq. FEU Treaty might be violated here. This would presuppose that the sphere of protection of the free movement of goods is concerned. For that it is necessary that the traded goods originate in member states of the European Union or, coming from third countries, are in free circulation in the member states after having been duly imported (cf. art. 28(2) FEU Treaty)..." An example of the decisive style (as in a judgement): "The fundamental freedom of Mr. A guaranteed in art. 28 et seq. FEU Treaty is not violated here because the sphere of protection of the free movement of goods is not concerned. The sphere of protection of this fundamental freedom is not concerned because the contraband goods traded by Mr. A neither originate in member states of the European Union nor are they in free cirulation in the member states after having been duly imported as required by art. 28(2) FEU Treaty...".

[25] See also *Schwerdtfeger* (note 1), no. 26 ff., 838 ff.; *Bringewat* (note 1), no. 248 ff., and, concerning the various ways of representing, *Butzer/Epping* (note 1), p. 57 ff.

If you encounter a problem controversially discussed in literature, you should first assess whether it is in deed relevant for the answer to the case question. Only if this is the case do you have to deal with it in your case solution. In doing so, you should differentiate with regard to the importance in the actual case. The same problem may have to be discussed on 10 pages in one case and in a few sentences in another case. Start with a short introductory sentence, which explains why the controversial issue is important for your case, and then discuss it as any other legal issue, beginning with the relevant legal norms. Do not forget the case-orientated concluding sentence at the end of the presentation (for example: "So [therefore] the new law passed by the Saeima represents a restriction on the freedom to provide services in the sense of art. 56 sub-sect. 1 FEU Treaty and with that an encroachment on this fundamental freedom."). Sometimes it is advisable to end a part of the case solution with a sequence of several short concluding sentences (for example: "... So the activities of Mr. A are not falling into the material sphere of protection of the freedom to provide services. Consequently, the sphere of protection of this freedom is not concerned. The fundamental freedom guaranteed to Mr. A in art. 56 et seq. FEU Treaty is not violated.").

When dealing with a controversial issue that is of major importance for the case, you *categorically* must *present and consider thoroughly all opinions submitted on this issue*. (This applies to course works, reports of judge-rapporteurs and expertises for clients. In written tests at university, you may confine yourself to the more important opinions.) Any *concealing* of important opinions submitted in jurisprudence or doctrine *would represent a fraud*, depriving your case solution of any substantial value.[26] This will often mean that you must do extensive jurisprudence and literature research. In the field of European Union law, it is necessary to consult special literature from several member states (as far as your language skills allow it), in particular the very rich literature in French, German and English language. In Rīga, this will necessarily imply to use both special libraries: that of the Faculty of Law of the University of Latvia and that of the Riga Graduate School of Law; furthermore, you should explore the internet. However, the workload is not as bad as it might look like: The numerous comprehensive textbooks, works of reference, encyclopaedias and handbooks and in particular the commentaries[27] allow an easy access to the existing scientific disputes and opinions.

Do not follow automatically the position of the European Court of Justice, if there is significant resistance from legal scholars or different opinions of Advocate-Generals.[28] From a scientific perspective, the Court's position it is *just one opinion among others* (an important one, however). *European Union law is not a case-law system*, which invests the judicial branch with a norm-making power somehow resembling de facto that of the legislator. In European Union law, there is no genuine case-law as in the English law. Therefore, the reference to a decision of the Court of Justice cannot replace your own reasoning. Note, by the way, that the Court may change its jurisprudence and has done it frequently! Therefore, also in a case solution, objections in literature or on the parts of national courts or Advocate-Generals must at least be presented and discussed shortly.

The dealing with a scientific dispute cannot be confined to a mere report on the state of discussion. It is not a question of rendering homage to legal science (or to the Court of Justice) but of solving a practical case in a scientifically consistent solution. Therefore, concerning all issues, if disputed or not, your individual and independent legal reasoning is of decisive importance. It may be inspired but not replaced by the reasoning of others. Quotations, including references to court decisions, cannot compensate for missing arguments. By contrast, when dealing with problems of minor importance and evident alternative solutions, it may be proper to develop all possible argumentations yourself and to present the associated doctrines "en passant" only.

5) Objective style of writing

Finally, legal case-solving is characterised by a scientific, objective and precise style of writing. Important statements should be formulated *as exactly* as possible; this requires particularly a careful choice of preposi-

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[26] An example: Concerning the fundamental freedoms, there is this prevalent new approach that refers to their convergence and parallels with fundamental rights and concludes in a certain general structure of examination (sphere of protection, encroachment, justification by the limits), see the diagrams 2 - 7 from the course "EC Internal Market Law" (note 5). You are not obliged to follow this approach in a case solution. You must, however, present and discuss it and give reasons why you do not follow it. If you do not even mention it and just refer to publications following different approaches, your "expertise" is corrupt.

[27] See the general bibliography on European law distributed in this course, http://home.lanet.lv/~tschmit1/Lehre/Case-solving_EU-Law.htm#*general_bibliography.

[28] Look for all kinds of resistance at all possible places. Explore the specialist literature in the field of European Union law, but also in the fields of constitutional law (concerning basic decisions of the ECJ), human rights (concerning modern standards of protection), administrative law and civil law. You must also take into consideration critical reactions of the constitutional courts and other courts of the member states (as expressions of opinions).

tions and conjunctions. Do not refer to yourself in your writing (e.g. "I think...", "I am of the opinion that...", "in my opinion"...). Do not use emotional expressions, strong language or exaggerating expressions ("certainly", "of course", "without doubts", "absolutely unproblematic", "extremely inappropriate" etc.). Such words do not compensate for shortcomings in the reasoning but rather point to them. Be careful to use the word "very" sparingly; instead you may apply classical terms of legal language, such as "significant", "weighty", "considerable" etc. *Refer to the relevant legal notions at the correct places*, since every experienced reader will automatically look for them. Finally, make sure that your choice between the analytical style and the decisive style of writing and reasoning is clearly reflected in the employed grammar (choice of subjunctive or indicative mode, choice of the right conjunction etc.).

Textual quotations are not common and usually inappropriate in legal case-solving. Instead you may apply, depending on the language, indirect (reported) speech or the subjunctive mode. *Avoid transcribing long passages of statutes or other legal acts* or of the facts of the case, if your paper is not addressed to non-lawyers without legal knowledge. You may assume that they all are at hand for the reader.[29] If necessary, you may compile longer excerpts of foreign statutes, constitutions, court decisions etc. in an appendix. Concerning European Union law, there is no reason to transcribe anything, since all sources of primary and secondary law and even the important court decisions are easily accessible in all languages at EUR-Lex.[30]

Specify legal norms as exactly as possible, in order to allow the reader to find the relevant passage immediately and to avoid misunderstandings. Where necessary, indicate not only the relevant article but also the section (paragraph), the sub-section (sub-paragraph), the phrase, the part of the phrase and the relevant bullets and numbering. Chains of norms have to be compiled carefully and in the right order. Try to be as exact as if you were compiling a computer program. All this applies without regard to the practice in the relevant field of law or the national legal culture, because it is an inherent rule of legal thoroughness and legal professionalism, valid throughout the world (and even beyond). In particular, there is no reason why the standards of exactitude and precision should be lower in European law than in civil law.

By the way, even lawyers must show an eloquent, fluent linguistic style, as long as precision does not suffer. This requires in particular a reasonable division of the text into paragraphs. On the one hand, you must avoid unstructured remarks filling pages. On the other hand, you must not fragment the text into separate paragraphs for every single detail. An appropriate arrangement of your thoughts will allow the reader to process them in the right context and with the right emphasis.

Further requirements presuppose sufficient linguistic skills and therefore are met by most lawyers (including myself) to a rather limited extent: Avoid long and encapsulated sentences, since they might be confusing. Express your main thoughts preferably in main clauses and not in subordinate clauses. Use concise verbs and refrain from converting adjectives and verbs unnecessarily into nouns. If possible, use the active voice instead of the passive voice, since sentences in active voice are shorter, more illustrative and particularly more precise.[31] However, the use of the active voice will force you to indicate exactly *who* has said, done or omitted something, and this will normally require more thorough reflections.

In detail, the legal style of writing differs considerably from country to country and from language to language. American legal literature often shows a less compact, more excessive style than French or German literature. In the Romance languages, the style is sometimes more elegant, in German language more precise but also more ugly. In the Latvian language, it may be even more precise (but, hopefully, less ugly...). Besides, also the legal style of writing changes with the years.

V. The final check

Before finishing the case solution, you must complete a final check. Check once more if your expertise exactly answers the case question and if this becomes apparent. In particular, the results presented at the end (e.g. in an "overall conclusion") must refer logically and in content to the case question. Eliminate all discrepancies and inconsistencies, superfluous (unasked) considerations and stylistic shortcomings. In a course paper, inspect once more the footnotes, the bibliography and the contents for possible mistakes in the formalities. In particular, verify if the quotations depict the right context (see below, B.II.4): According to experience, there will be quotation mistakes in almost every course paper!

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29 Note: It is a sign of missing professionalism (or of insinuating the missing professionalism of the reader...) if you append long excerpts of well-known legal acts to expertises addressed to legal professionals!

30 http://eur-lex.europa.eu/en/index.htm.

31 See also *Bringewat* (note 1), no. 194.

Eventually you should have a last glance on the separate sheet of paper where you noted your spontaneous ideas in the beginning (see above, A.I.3). Check if every idea has either been processed or proven irrelevant. Take advantage of the last occasion to add considerations on omitted aspects to your case solution.

B. The formal design of the case solution

I. General aspects

Correct spelling, correct use of grammar and correct punctuation are a matter of course for every lawyer. Frequent spelling mistakes create the impression of a hasty, volatile work without the necessary thorough final check. Faulty quotations of legal norms or mistakes that distort the meaning of the sentence may cause doubts or misunderstandings and affect the practical value of your work. (Misunderstandings will occur in particular if you refer to the wrong section of a legal norm or if you forget the word "not".) Unreadable passages in written examinations will usually not be taken into account. Misquoting or imprecise quoting will raise the suspicion that you do not master the methods of "scientific" (i.e. sound and respectable) legal work. All these shortcomings will degrade the overall impression of your work.

When writing in English, *use either the British or the American style* and orthography but do not mix them. When writing in German, preferably follow the *new German spelling rules* in the actual revised version from August 2007.[32] If you do not know them, follow the old rules but try to be better than your anarchistic German colleagues and not to mix them. When writing in Latvian, have a look on the webpage of the Latvijas Zinātņu akadēmija Terminoloģijas komisija,[33] to be sure that you use common and understandable Latvian translations of foreign words. Note, however, that you are *eventually not bound* to use their terminology: Since science is free, the use of scientific terminology cannot be regulated by laws or public institutions. In a free and democratic state, any attempt to do it must be ignored. If you are convinced that the proposed term is wrong, you should use the correct one but explain your decision in a footnote.

II. Special features of course papers[34]

Suggested composition: • cover sheet (with your name, your student registration number, your address and information on the field and the semester or year of your studies), • facts of the case (as distributed by the lecturer), • table of contents, • bibliography, • list of abbreviations,[35] • text of the case solution, • your signature and, where appropriate, an • index. If there is a page limit, you absolutely must comply with it. Overlong deliberations would point to a lack of focussing and weighting and to insufficient skills of presentation and make the reader/corrector angry.[36] If necessary, you can reduce the volume of the text by making it more compact and concentrated, modifying the grammar and eliminating repetitions and meaningless phrases during the final check.

1) Structure and table of contents

The table of contents should be clear and not too detailed. Usually, it will be much shorter than the draft outline discussed above (see above, A.II.). Note that the headlines mentioned in the table of contents must correspond *exactly* to those in the main text. You should verify that before finishing your work!

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[32] Look for the details at www.neue-rechtschreibung.de.

[33] Http://termini.lza.lv/index.php.

[34] Concerning the formalities of legal course papers according to the German tradition see *Schwerdtfeger* (note 1), no. 840 ff.; *Butzer/Epping* (note 1), p. 79 ff. Concerning the formalities of scientific writing in general see the references in the bibliography to the course contribution "Introduction to scientific legal research" - a practical and methodological instruction for doctoral students", www.lanet.lv/~tschmit1/Lehre/Scientific_legal_research. htm.

[35] If you confine yourself to common legal abbreviations, a reference to a professional list of abbreviations, such as the *Cardiff Index to Legal Abbreviations* (www.legalabbrevs.cardiff.ac.uk/about.jsp) or *Kirchner/Fiala*, Abkürzungsverzeichnis der Rechtssprache, 6th edition 2007, will suffice. You may also complement this reference by an own list of additional abbreviations.

[36] Manipulations with word processing programs are not helpful here: An experienced corrector will know and therefore immediately recognize all tricks. If not specified otherwise, comply with the following standards: font size 12 pt (with standard horizontal spacing) for the main text and 10 pt for footnotes, line spacing 1.5. Leave a *margin* of at least 5 to 7 cm. By the way, manipulations do not only reduce the volume but also the readability of a text...

Use a pattern of division and subdivision, which allows an easy orientation and is not too unfamiliar to the readers and potential readers of your expertise! The common patterns differ considerably depending on the time, the country and the relevant discipline. In some countries, lawyers use different patterns as their academic colleagues.[37] Theoretically, you are free to choose the pattern or even to invent your own one, but in practice, psychological reasons may predetermine your choice.[38]

According to a fundamental logical principle of structuring, any subdivision presupposes that there will be *at least two subitems*. This applies to all scientific disciplines in all countries at all ages. Any section "1.", which is not followed by a section "2.", is strictly inadmissible. To violate this rule would inevitably result in a serious structural deficit and indicate that the writing down of the case solution has not been prepared adequately on the basis of the draft outline. It does not help to insert a second sub-item called "conclusion", because the conclusion obviously refers to the preceding considerations and therefore must be integrated there. Should the situation arise, there is no other way than to re-structure the complete relevant part of your text.[39]

2) Bibliography

The bibliography must record in alphabetical order all legal literature and other scientific literature cited in your work. (Legal acts, court decisions and law reports are not listed here but may be listed in separate tables). Quotations are necessary if the information in a sentence or part of a sentence does not originate from your own reasoning but from the reading material. Pay attention to the *correct spelling of the names* (including the use of special characters)! Concerning articles in law journals, do not forget to specify the name and volume of the journal and the page where the article begins. A division of the bibliography in different categories such as commentaries, textbooks, works of reference and handbooks is not common but permissible and welcome in student course papers. It will often be appropriate in expertises for important clients or colleagues.

Do not include any literature in the bibliography that is not cited in your case solution. Do neither include sources that have been cited but do not represent legal literature or (other) scientific literature. If appropriate, you may display them separately at the end of the bibliography. This applies for instance to materials from the legislative process and other parliamentary materials, to stenographic protocols and to information brochures of national ministries and institutions of the Union.

The dealing with sources from the internet will often cause problems. Again, the bibliography is limited to publications with a scientific character. It will not list them separately but within the relevant categories. Most of these publications will be articles in electronic journals or periodicals of university institutes. Online contents of university lecturers can also be included if they are not reserved to a closed group of students but presented to a broad expert public. On the other hand, contributions to political events, even those of reputated lawyers, do not represent a scientific resource. Sometimes it might be difficult to draw the line.

The bibliography must provide the following information:[40] • the name of the author (or authors), including the first name, • the title of the publication (where appropriate with specification of the quoted volume), • the edition (if it is not the first edition), • the year (and optionally the place) of publication. Do not mention academic titles ("Dr.", "Prof."). If someone is not the author but the editor of the publication, you must mark it by an addendum ("ed."). If several authors publish a joint publication, mention them in the order chosen in the publication.

Articles in legal journals are listed with specification of the volume or year of publication and the page where the article begins. You may use common abbreviations (e.g.: "Schmitz, Thomas, Die Grundrechtecharta als Teil der Verfassung der Europäischen Union, EuR 2004, p. 691 ff."). The same applies to doctrinal

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[37] For example, German lawyers mainly use the following pattern of division and subdivision: A./B./C. ..., I./II./III. ..., 1./2./3. ..., a)/b)/c) ..., aa)/bb)/cc) ..., α)/β)/γ) ..., (1)/(2)/(3) ..., (a)/(b)/(c). Their colleagues in economics and political science, however, prefer the following pattern, which is also popular in Latvia: 1./2./3., 1.1./1.2./1.3., 1.1.1./1.1.2./1.1.3., 1.1.1.1./1.1.1.2./1.1.1.3. etc. This pattern, however, may cause confusion, if the subdivisions arge going deep (it is not evident to be aware of the difference between the positions "2.1.4.4.6." and "2.1.4.4.4.6." at first glance...).

[38] There may also be a pure practical reason to use a certain pattern of division and subdivision: Most modern word processing programs are able to manage the table of contents and the numbering of the headlines automatically. Making use of this function, you may easily avoid structural inconsistencies, but you are confined to the selection of patterns provided by the software.

[39] In a written examination at university, this may be impossible with regard to the time limit. In this case it is advisable rather to insert a second item called "conclusion" than to sustain the serious structural deficit.

[40] See, as an example, the general bibliography on European law (from this course).

annotations to Court decisions. Contributions to commemorative publications are listed under the names of the individual authors, specifying the exact place within the publication (e.g.: "Schmitz, Thomas, Der Vertrag über eine Verfassung für Europa als Verfassung, in: Grote, Rainer; Härtel, Ines; Hain, Karl-Eberhard and others (editors), Die Ordnung der Freiheit. Festschrift für Christian Starck zum siebzigsten Geburtstag, 2007, p. 623 ff."). Concerning publications in the internet, you must specify the exact web address with a deep link.[41] You must also indicate the date of your last verification of this address. You may confine yourself, however, to a general information for all websites mentioned in the bibliography (e.g." All websites last visited September 29, 2008").

All *bibliographical specifications* must be made *in the language of your case solution* and not in the language of the publications, except those on the names of the authors and editors and on the titles and subtitles. The same applies, of course, to the relevant abbreviations. This rule results from logic and therefore is independent of the individual language, country or national legal tradition. So there is no justification to use the words "Herausgeber"/"editor", "Band"/"volume" or "Seite"/"page" or the abbreviations "(Hrsg.)"/"(ed.)", "Bd."/"vol." or "S."/"p." in a Latvian text!

3) Index

If you compile an index, you should build it on a homogeneous and common legal terminology. Make sure to create an expedient and consistent system of entries and subentries. Often, it is useful to combine the relevant terms in two different ways (e.g.: "Constitution - of the European Union" and "European Union - constitution").[42] Sometimes it might be helpful also to include a common colloquial, non-technical keyword (in our example: "European constitution"). Always focus on the function of an index: to provide for a quick and easy access of the reader to all passages relevant to him.

In course papers, indexes are welcome but not necessary and not yet common. In comprehensive expert opinions for colleagues or clients, however, they are highly recommended, in particular if the headlines of the sections do not reflect or only partly reflect the problems of the case. In master and doctoral thesises they are absolutely essential. Use an advanced word processing program to minimize the necessary effort.

4) The art of citing

Whenever you draw upon considerations in jurisprudence or doctrine, you must prove them by correct quotations. The art of scientific citing varies strongly depending on the country and the scientific discipline. According to Latvian colleagues, there are also different citing traditions in Latvian and German legal science. Some rules, however, are requirements of logic and precision and therefore universal.

Citing has a double function: It is supposed to explain to the reader, *what exactly* another person wrote *regarding what subject*, and *where exactly* this is to be looked up. Several requirements are following from that:

For one thing, pay attention to the *correct context*. The sentence substantiated by the citation must have the same contents as the cited passage. Consequently, it can only reflect a general legal opinion and not comment on the case under consideration (not, for instance: "Hence the activities of Mr. A must be considered as a service in the sense of art. 57 FEU Treaty.[43]"). Furthermore, always scrutinize if the cited passage actually expresses exactly the legal opinion you want to refer to. On closer examination, this will often not be the case. Then clarifications are necessary to elucidate the context. Use adverbs, conjunctions, attributes and other grammatical means; in most languages, there are also special expressions commonly applied for this purpose. If the context is rather vague, in English the abbreviation "cf." (for "confer") is appropriate.[44] It may express, for instance, that the cited author is principally but not in detail of the same opinion or that his opinion is based on slightly different arguments. Besides, make sure to place the footnotes accurately (inside or outside the brackets, behind the paragraph, the sentence or the relevant part of the sentence?). For reasons of precision, it is sometimes appropriate to insert a footnote directly behind a particular word.

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[41] If the internet source is not part of the world wide web (www), it is advisable to refer also to the internet protocol ("http://").

[42] See as an example the vocabulary tables "Basic Vocabulary of European Union Law" (from this course), which follow the same concept.

[43] Here the citation would signify that the quoted author has indeed spoken about the fellow Mr. A from your case!

[44] In German citing tradition, the German equivalent "vergleiche" ("vgl.") is very common.

For another thing, allow a *definite and precise localisation of the source of information*. When citing court decisions, articles in journals and contributions to commemorative publications you must specify both the page where the decision or article begins and the page with the quoted passage (e.g. "ECJ, case 26/62, van Gend & Loos, [1963] ECR 1, 3" or "Schmitz, EuR 2004, 691, 695"). When citing internet publications with artificial "page numbers" or margin numbers, refer to these numbers. Concerning court decisions, refer preferably to the official reports (or, even better: to the official publications in the internet). As to the decisions of the European Court of Justice, it is not any more necessary to specify the location in the printed reports, since all decisions are freely accessible at the internet.[45] Just indicate the case number and the relevant margin number. As to the decisions of other courts, refer preferably to official margin numbers in order to allow the reader to find the cited passage instantly without regard to the place of publication.

If a publication uses margin numbers, you should refer in principle to them and not to the page numbers. Often, citing by margin numbers is more precise, because there are several margin numbers on one page. Furthermore, it is more practical, because it allows to spot the cited passage easily even in the future editions of the publication. Usually, the margin numbers do not change in a new edition. So you can use the same reference years later, just updating the specification of the cited edition and its year of publication.

The titles of quoted journal articles are usually specified in the bibliography but not in the footnotes (the notes would become too long). The web addresses of articles published in the internet neither need to be specified in the notes, if the publication is part of an electronic periodical and the exact web address is noted in the bibliography. Mostly, it is recommended to quote as proposed by the author or editor.

Contributions to joint publications (in particular commentaries, works of reference, handbooks and comprehensive textbooks) are quoted under specification of the respective author (e.g. "Epiney, in: Ehlers (editor), European Fundamental Rights and Freedoms, 2007, § 8, no. ..." or "Niedobitek, in: Streinz (editor), EUV/ EGV, 2003, art. ... EC Treaty, no. ..." or "Ipsen, in: Isensee/Kirchhof (editors), Handbuch des Staatsrechts, volume VII, 1992, § 181 no. ..."). However, the authors of these contributions will not be mentioned in the bibliography. Even the most comprehensive joint publications with contributions of dozens of authors will only have one entry in the bibliography. To avoid superfluous writing, you may use abbreviations in the footnotes, which have become common for many important works (e.g. "Ipsen, in: HStR VII, 1992, § 181 no. ...").

As a matter of course you must *verify all citations* that you find in textbooks, commentaries, court decisions etc. before adopting them. Often, the specifications are not correct or the cited statement does not fit into the concrete context of your case solution. Misquotations clearly indicate careless work. At university, an experienced corrector will discover them more easily than most students imagine. In an "expertise" for colleagues or clients they would be embarrassing. If there is definitely no way to verify an important citation (because the publication is not available in Latvia and there is insufficient time or money to verify it or to get it from abroad), you should refer to the important original passage indirectly (i.e. by citing not the passage but the citation).

5) The formatting

Finally you should pay attention to an appealing formatting that provides for a clear and easily readable presentation of the text.[46] It is recommended to make *restrained and graduated* use of the modern formatting options, such as bold types, italics, different font sizes and underlinings (by the way, it may also be useful in written examinations). In particular, *important keywords should be emphasised* so that they are not missed and later can be found again easily. Furthermore, the main headlines may have a bigger and the footnotes a smaller font size (the latter will reduce the "feeled volume" of the text). For reasons of clarity, there are some *special rules concerning headlines*: Insert at least one empty line in front of every headline and two or three empty lines in front of every main headline. Make sure that the distance to the following text is smaller than that to the preceding text, since the headline and the following text form a textual whole. In no case must the headline stand alone at the bottom of the page, separated from the following text. - It will not invalidate your expertise if you ignore these rules, but it will prove a lack of professionalism.

Pay particular attention to the *clarity of the table of contents*, since the table of contents is the most important tool for the orientation of the reader. It should not only present but also visualise the contexts. Use bold types

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[45] The decisions are published at the website of the ECJ (http://curia.europa.eu/en/content/juris/index.htm) and at EUR-Lex (http://eur-lex.europa.eu/JURISIndex.do?ihmlang=en).

[46] To get some ideas, see the Guide to Effective Formatting of the Griffith University, www.cit.gu.edu.au/~davidt/ tech_comm/ref_3.html.

and different font sizes but rather avoid italics. Indent subordinated items gradationally (see the example on p. 1).

A well-wrought formal design cannot compensate for a lack of substance in a legal expertise. But in can have a psychological effect that enhances the impression of the existing substance on the reader. It too contributes to the professional appearance of the lawyer.

More informations on this course at www.lanet.lv./~tschmit1. For any questions, suggestions and criticism please contact me via e-mail at tschmit1@gwdg.de.

(Datei: Introduction to legal case-solving (Cases-EULaw))