

Liability of a state

Francovich case

- Italy failed to implement a directive
- Direct effect was not possible
- Solution: liability of a state!
- 3 conditions must be fulfilled:
 1. result prescribed by the directive should entail the grant of rights to individuals
 2. it should be possible to identify the content of those rights on the basis of provision of the directive
 3. existence of a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties

Brasserie du Pecheur / Factortame

- Where a Member State acts in a field where it has wide discretion, it will be liable to an individual for breach of EC law provided:
 - (1) the rule of law infringed is intended to confer rights on individuals;
 - (2) the breach is sufficiently serious;
 - (3) there is a direct causal link between the breach and the damage

Kobler

- The state is liable even in case of a damage that was caused by breach of EU law by the state's courts of last instance...