



PART A

Question 1

"National constitutions and European integration" is one of the main topics related to the drafting of current and future European constitutions: the interlink among the domestic constitution of member states and European law, mainly from the point of view of the latter. Two cornerstones shape modernity. The main elements of the European model: on the one hand, the implementation of the top-notch European court of justice and the latest developments in the supremacy of EU law resulting from the Treaty of Lisbon; The interaction among European law and national law determines the legal basis and conditions.¹

It can be said that after the incorporation and implementation of the Lisbon Treaty, the well-established jurisprudence of the European Court of Justice on the supremacy of Community law continued to apply to EU law as well. It has been observed that the top notch European court regard EU law as a new horizon in international law.² This concept has been witnessing a great support from all of the member states. Soon after, the court changed its wording and referred to the EEC Treaty as a separate legal source. The Court explained very early on the impact of this concept on the interlink among EU law and domestic law of the member states, and thus unconditionally confirmed the primacy of Community law over national law: The influence of Community institutions undermines the unity and cohesion of EU. Such measures can only be assessed as per the underlying principle of law in their nature, however formulated, without depriving them of the nature of Community law or the legal basis of the Community³. Effects in a member state do not affect claims that they violate fundamental rights, cf. for according to the constitution or constitution of the country. This precedent clearly relates to the unconditional generalization of any state-preserved fundamental social right.⁴

The priorities of this development have not been abandoned or expanded based on the status quo or constitutional conventions. This last point of view can be considered since statement no. 17 – like the general jurisprudence of the top-notch European court – is unconditional and does not refer to the competence of the EU. However, the right to limit the powers granted by the Union cannot really be challenged by express

¹ DE WITTE, Bruno; MARTINELLI, Thibault. *Treaties between EU member states as quasi-instruments of EU law*. 2018.

² KENNEDY, Elizabeth; MILLARD, Christopher. Data security and multi-factor authentication: Analysis of requirements under EU law and in selected EU Member States. *Computer Law & Security Review*, 2016, 32.1: 91-110.

³ LAFARGE, François. Administrative cooperation between member states and implementation of EU law. *European public law*, 2010, 16.4.

⁴ ZUBEK, Radoslaw. Core executives and coordination of EU law transposition: Evidence from new member states. *Public Administration*, 2011, 89.2: 433-450.



treaty provisions.⁵ Furthermore, the Treaty of Lisbon confirmed not only the limitations on the powers of European Union law, but also respect for the country's constitutional environment.⁶ This aspect is significantly different from the jurisprudence cited by the premium court of the EU member states: the treaty expressly provides that the EU "respects the equality of the member states before the conclusion of the treaty and their national identity embodied in their basic structure, their politics and their constitution, including regional and local self-government." The fundamental role of the state must be respected. ...". Furthermore, the Charter of Fundamental Rights must be kept in mind when protecting fundamental rights.

Contrasting Comparison between Countries

Germany

The openness of the German constitution to EU law is reflected in several articles of the German constitution (Grundgesetz). This has also been underlined by several decisions of the German Constitutional Court, including the recent decision in Lisbon.

Furthermore constitutional obstacles to EU integration are mostly led to the 24th, 38th, 77th I. and 80. II. articles of the constitution. For these reasons, the German Constitutional Court's implementation of the constitutional limits of European integration seems particularly detailed and subtle compared to other countries.

Article 30 sets out constitutional obstacles to (further) European integration. These barriers include democratic, social, federal and subordinate principles, the rule of law and the protection of fundamental rights. German institutions must adhere to these principles when they decide to transfer powers to the EU level, participate in EU legislation and apply EU law. However, "structural coherence" is not required because the EU must adhere to these principles in its specific "German" version. Rather, the requirements have a "European" meaning, i.e. to set standards appropriate to the status and role of the EU.

Among the above principles, the principle of democracy received the most attention in the Lisbon decision of 2008. The Court emphasized the principle of delegation of power and maintaining a "balance" in decentralization. In this respect, he also believes that the new democratic elements introduced by the Lisbon Treaty cannot fully compensate for the EU's democratic deficit. Therefore, the Bundestag, the German parliament, must retain considerable power. In addition, the German legislature should only allow the assignment of jurisdiction and contractual changes that are foreseeable. German scholars argued that Article 23 implied that the relinquishment of German sovereignty and state power was also prohibited. The manner in which the

⁵ BIGO, Didier, et al. Mass surveillance of personal data by EU member states and its compatibility with EU law. *Liberty and Security in Europe Papers*, 2013, 61.

⁶ KNILL, Christoph; TOSUN, Jale. Post-accession transposition of EU law in the new member states: a cross-country comparison. *European Integration online Papers (EIoP)*, 2009, 13.2.



Constitutional Court dealt with these cases has been strongly criticized in the German academic literature.

The third set of obstacles is found in Article 24 I 4 (which should be read in the context of the perpetual guarantee of Article 79 III of the Constitution). Among them, the amendments to the constitution do not affect articles 1 (human rights, immunity and inalienable human rights) and 20 (rules of democracy, social state, federal state, rule of law). These basic principles are generally regarded as the "constitutional identity" of Germany. It is not even for the legislature to amend the constitution for perpetual liability.⁷

In addition, the Lisbon Decision sets out a number of national obstacles in the constitution, including simplified treaty amendments, constitutional provisions, general transitional provisions, special transitional provisions not limited to areas already fully defined in the constitution, and flexibility clauses. . Additional obstacles arise from the German legislature's strict interpretation of the eligibility clause and/or the directives of the German representatives in the Council and the Council of the European Union.

The working methods of the German Constitutional Court have sparked controversy. In particular, the Lisbon judgment was criticized for its state-centrism, the use of the perpetuity clause as a shield against integration and a paradoxical approach, suggesting that the strengthening of democratic organization at the EU level would lead to the EU. state, and on the other hand, according to the court, the interpretation of the constitution is again prohibited. Many commentators believe that the Lisbon decision unreasonably limits the flexibility of the German government in negotiations at the EU level. However, German observers do not note that Germany is still in the "moderate camp" compared to other member states.

According to the Lisbon decision, the German Constitutional Court will also examine the further application of EU powers through "identity review" in order to preserve the basic content of constitutional identity unchanged in the constitution. Obviously, "monitoring by higher authorities" and "teaching supervision" are additional and can only be used in cases where legal protection cannot be obtained at EU level. Both types of censorship can lead to EU law being ruled invalid in Germany. In this case, the GCC emphasized that these checks were limited to "clear violations" of EU mandates and would only apply in "exceptional circumstances, specific and limited conditions".⁸

France

The opening of the French legal system to Community law is a gradual process. In particular, evolving since 2004, the French legal system has clearly recognized that EU law has been incorporated into its constitution and termed as a great source of

⁷ EDWARD, David. EU law and the separation of member states. *Fordham Int'l LJ*, 2013, 36: 1151.

⁸ ROSAS, Allan. The status in EU law of international agreements concluded by EU Member States. *Fordham Int'l LJ*, 2010, 34: 1304.



legal principles for its constitution. However, the French authors argue that the Council of Ideas, the Council of State and the Court of Cassation may still take a partially different approach to EU law.

As per the constitution of EU it has been contended that the subtle changes and amending the treaty might not include the provisions that directly conflict the constitution. Moreover, the basic rights and freedoms must also not be infringed in this manner. According to the Constitutional Council, any delegation of power that threatened the basic and very conditions in terms of exercising the sovereignty would ultimately require a revision of the constitution.

This jurisprudence has led to constitutional changes through treaty changes at EU level (Maastricht, Amsterdam, Nice, Lisbon). This means that the any adoption of EU law could be very helpful in shaping the national constitution of the member states⁹ Furthermore, it could be analysed by this fact that the EU law acts as a corner stone of the domestic law of member states.

By employing thorough and brief review of secondary legislation, an important development has taken place in relation to the transfer of the legal system which started in 2004. Although the EU's legal obligation to implement EU directives is now also considered a French constitutional obligation, the Constitutional Council has emphasized that this obligation cannot override specifically conflicting constitutional provisions.¹⁰

The constitutional review of the detailed and unconditional implementation of the directive has been amended accordingly. In constitutional matters, the Council of State examines whether EU law provides effective protection to French constitutional principles or principles. If so, the Council of State deems it competent to verify whether the directive complies with relevant rules or principles of federal law; if there is serious doubt, it is referred to the Court of Justice of the European Communities for a preliminary ruling. On the contrary, since such rules or principles do not exist at the EU level, the National Assembly directly examines whether the relevant implementing measures comply with the constitution.¹¹

⁹ BIGO, Didier, et al. National programmes for mass surveillance of personal data in EU member states and their compatibility with EU law. *European Parliament, Brussels*, 2013.

¹⁰ NYMAN-METCALF, Katrin; DUTT, Pawan Kumar; CHOCHIA, Archil. The freedom to conduct business and the right to property: the EU technology transfer block exemption regulation and the relationship between intellectual property and competition law. In: *Protecting Human Rights in the EU*. Springer, Berlin, Heidelberg, 2014. p. 37-70.

¹¹ EILMANSBERGER, Thomas. Bilateral investment treaties and EU law. *Common Market Law Review*, 2009, 46.2.



PART B

Question 3

It has been researched that the freedom to do any sort of business activity must be incorporated as per the European Union law and the domestic constitution of the member states. Because, it has been found that to a business freely must be regarded as a basic and underlying principle of business law.

This discussion does not cover all aspects of the CFR. However, it is important to emphasize that business operations fall under II. section CFR – “liberty” – as it is considered to be something derived by the very concept of freedom which subsists as personal freedom. It has been observed that business stands as an individual right regarding the basic social freedoms. Moreover, it could also be very helpful and useful in maintaining a competitive system within the regimes. Many experts has argued that free business ensures the individual freedoms along with the benefits of the business. flow from a free market. In fact, as explained below, Title 16 of the Federal Regulations does not protect an individual's subjective opinion.¹²

It is argued here that Title 16 of the Federal Regulations protects all economic and social interests in a free market. it has been researched that an independent and free market results in benefiting the consumers greatly. Hence the businesses must be regarded as a linkage between economic, social and political bonds between the member states. Furthermore, the CFR has found to directly refer to the EU case Laws and independently refers to restrictions on trade freedom imposed by the EU. 52 CFR is an important final provision in terms of general restrictions, in addition to restrictions previously recognized by EC jurisprudence. Moreover, social utility defines the ceiling of art. 16 Federal Rules. It emphasizes the social dimension of the EU.¹³

a) Charge on the Video Games and the Drastic Impacts of the Children.

¹² SEDELMEIER, Ulrich. After conditionality: post-accession compliance with EU law in East Central Europe. *Journal of European public policy*, 2008, 15.6: 806-825.

¹³ STEFAN, Oana. Soft law and the enforcement of EU law. In: *The Enforcement of EU Law and Values: Ensuring Member States' Compliance*. Oxford University Press, 2017. p. 200-217.



In general, as per the given scenario Cyborgia have the right to seek the protection of the given fundamental rights incorporated by EU law as a core principles. Indeed, it created to balance between the principles of EU law and the constitution of Cyborgia. As noted in the research, economic initiative was always understood as a limitation of the European Union's capacity at that time. This article argues that this approach is still valid, but Article 16 of the Federal Regulation must be read in the light of the approach of the European citizenship clause and fundamental freedoms, particularly after the Treaty of Lisbon. Treaty of Lisbon and Article 16 provide the protection for Cyborgia to sell the video games in the neighbouring Playland. Therefore, the article can contribute to the fight against opposite discrimination, contribute to the protection of fundamental rights and promote economic and political integration. In other words, this provision can be used together with other fundamental rights contained in the CFR as a limitation of the powers of the Member States, and not only the EU. It can be argued that the CFR cannot extend the powers or authority of the EU, or that the CFR only applies to EU institutions and Member States already implementing EU law, the EU. However, as already mentioned, economic initiative must be understood in accordance with the European citizenship clause and the general principles of EU law.¹⁴ Therefore, it can be understood that it has a direct effect on the business regime of the member states.

b) Licensing and Opening Hours

As the economic initiative has certain limits. The first case of *Smith v Kelsey* the plaintiffs accused the European steel corporation as it directly infringed the property and the economic rights. This case certainly shed on the light on the given scenario. The European Commission, through the ECSC, has approved new rules that creditors must follow when selling coal. The purpose of these rules is to prohibit the sellers to back off from earning illegal profits within the market¹⁵ As a small sized business seller, the plaintiff has prominently argued In front of the could it could lead to shutdown of his business. This case is has of one it's kind in which ECJ has ruled that commercial enterprises should enjoy protection as a limitation of the powers of society at this time. This particular case law make a way for Cyborgia to protect it's businesses within the playland territory. However, this right cannot be interpreted as an absolute right, but must be understood based on its social role. This means that the first boundary of economic entrepreneurship is public interest. But if the public interest can indeed be a restriction on economic activity, the nature of the right cannot be hindered either. It means that Playland could not hinder the economic activities of the Cyborgian company to sell the video game services in neighbouring Playland.

The following cases followed the same approach. "Economic enterprise" is referred to in various ways, such as "private enterprise", "freedom of employment", "freedom of

¹⁴ VUKOTIĆ, Veselin; BAĆOVIĆ, Maja. Economic freedom and economic growth in South East Europe. *Transition Studies Review*, 2006, 13.1: 81-91.

¹⁵ GORMLEY, Laurence W., et al. EU law of free movement of goods and customs union. *OUP Catalogue*, 2009.



commerce", "freedom to engage in employment" and "commercial activity". It should be noted that rights be regarded as per their very substance and nature. In addition, the the substance of the right could be very helpful in knowing the true nature of rights..

The case of Spain and Finland v Alpingi and Council basically related to the challenging of the directive passed by the parliament and EU Council, which aims to regulate the working hours of persons engaged in road transport. it is not possible to apply these rules to self-employed entrepreneurs, as this would constitute a violation of the right to freedom of employment and private business. The court has argued that rights must be regarded as a cornerstone of EU law, these rights makes the EU diverse in nature.¹⁶ This means that the rules and regulations passed by the Playland's parliament which threaten the economic activities of Cyborgian video game enterprises. Further, restrictions can apply in case of couple of conditions could be met this means that the measures of the law must not violate the very basic of people fundamental rights, as these measures aim to ensure better safety. It is considered to be proportionate to the public interest. Courts have also recognized in other cases that environmental protection is in the public interest. Other reasons that can be interpreted by the European Court as public interest are consumer protection, protection of competition and intellectual property rights, international peace and security.¹⁷

As regards the second condition, which concerns persons involved in mobile transport, the European Court of Justice or the Public Prosecutor should check that if it relates to the self employed workers or not. Further, it would not undermine the core of the business enterprise.¹⁸ The court and the state prosecutor came to the provided legal measures has not found to be infringe the content of the provided rights. Simply put, these metrics affect the performance of the campaign.¹⁹

Moreover, it has been noted that the CFR is a binding authority under Lisbon Treaty. As mentioned earlier, it was up to the courts to define business enterprises and set their boundaries.²⁰ However, the CFR has prominently gave the clarification by

¹⁶ HERCIU, Mihaela; OGREAN, Claudia. Interrelations between economic freedom, knowledge economy and global competitiveness—comparative analysis Romania and EU average. *Studies in Business and Economics*, 2011, 6.2: 46-59.

¹⁷ GROUSSOT, Xavier; PÉTURSSON, Gunnar Thor; PIERCE, Justin. Weak right, strong Court—The freedom to conduct business and the EU charter of fundamental rights. In: *Research Handbook on EU Law and Human Rights*. Edward Elgar Publishing, 2017. p. 326-344.

¹⁸ VÁSQUEZ, Ian; PORČNIK, Tanja. The Human Freedom Index 2016. 2016.

¹⁹ VARGA, Zsafia. National remedies in the case of violation of EU law by Member State courts. *Common Market Law Review*, 2017, 54.1.

²⁰ FERUNI, Nerajda, et al. The impact of corruption, economic freedom and urbanization on economic development: Western Balkans versus EU-27. *Sustainability*, 2020, 12.22: 9743.



codifying the basic rights and freedoms in law.²¹ It is argued here that the court's behavior contributes to working to protect this right being somewhat coordinated.²²

c) Violent Video Games and impact on Young People.

In a recent case, the European Court of Justice ruled that basic freedoms regarding free business and trade termed as underlying element of EU law. The EIK also partially relied on its previous case law. Therefore, it appears that business is protected by the CFR and the constitutional traditions of the member states and the general principles of EU law. It should be noted that basic freedoms of employment, trade and business must not be violated within EU.²³ Taking into account that freedom of trade is in fact a general rule and does not overlap with freedom of trade, he emphasizes that the ban in question can affect freedom of trade. AG Mazàk²⁴ underlined in point that fundamental rights could not be viewed as absolute rights because these should be underpinned as per their social function. It recognizes that this is a 16 CFR limitation and that the limitation may be justified if it serves the public interest. It is therefore not proportionate to the goals aimed at and does not include an unauthorized intervention that impairs the essence of these rights.²⁵

He then quotes paragraph 1. Article 52 CFR and claims that the restrictions must be determined by law, besides the underlying nature of the rights must be coherent with the interest of EU. This article strictly provides that Association of Computer Games Producers (CACGP) mostly has a freedom of business in Playland but as this restriction seems to effect the right and freedom of the young consumes of video games. Therefore, he claims rules, regulations and laws must be incorporated to ensure social health and benefits.²⁶ This necessarily means that any proportional linkage between health and alcohol consumption is rejected, whether the health claims are scientifically substantiated or not.²⁷ The Court also held that the seriousness of the

²¹ MAXEINER, James R. Freedom of Information and the EU Data protection Directive. *Fed. Comm. LJ*, 1995, 48: 93.

²² VAN ROSSEM, Jan Willem. Interaction between EU law and international law in the light of Intertanko and Kadi: the dilemma of norms binding the Member States but not the Community. *Netherlands Yearbook of international law*, 2009, 40: 183-227.

²³ CHORTAREAS, Georgios E.; GIRARDONE, Claudia; VENTOURI, Alexia. Financial freedom and bank efficiency: Evidence from the European Union. *Journal of Banking & Finance*, 2013, 37.4: 1223-1231.

²⁴ ASTERIOU, D.; PILBEAM, K.; TOMULEASA, I. The impact of economic freedom, business regulation and corruption on bank profitability and bank stability: Evidence from Europe. 2016.

²⁵ SINGH, Devesh; GAL, Zoltán. Economic freedom and its impact on foreign direct investment: Global overview. *Review of Economic Perspectives*, 2020, 20.1: 73.

²⁶ CAETANO, José; CALEIRO, António. *Economic Freedom and Foreign Direct Investment--How different are the MENA countries from the EU?*. Documento de Trabalho, 2009.

²⁷ GIUBBONI, Stefano. Freedom to conduct a business and EU labour law. *European Constitutional Law Review*, 2018, 14.1: 172-190.



public health objectives could justify the adverse, even significant, consequences of the restrictions.²⁸

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²⁸ NOGAL-MEGER, Paulina, et al. The quality of business legal environment and its relation with business freedom. *International Journal of Contemporary Management*, 2018, 2018.Numer 17 (2): 111-136.



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- a) All computer games must be labelled clearly to indicate whether they contain violent material which might make them unsuitable for young people.

Playland has been an increasingly important market for the members of the Cyborgian Association of Computer Games Producers (CACGP). The CACGP fears that these Playland's provisions will hinder their members' business opportunities in Playland.