

# **The Law of EU**

## Table of Contents

Part 1 .....	4
Part 2 .....	8

## Part I

### **Question 1 - Explain why the Maastricht Treaty (Treaty on European Union, 1992) is so significant in the history of European integration.**

Maastricht is significant in European integration as it is the birthplace of this Union. It was the place where the treaty was signed and named after this place. Before 1991, Maastricht was well known for its potteries, but when 12 member states gathered to form a community of their own, the Maastricht Treaty came into existence.

The leaders of member states had their concerns which were of national importance to them. A union that started in the 1950s was halted in the 1970s after Europe was hit by inflation which also brought unemployment. Later in 1980, European leaders began to think about cooperation and started forming alliances for their project.<sup>1</sup> The development of a single market was a key approach for this project which boosted Europe's economic condition.

The treaty of Maastricht is formally known as the "Treaty of European Union". It is known to be an agreement that was formed by the heads of the European Community. It was formed in 1991 and came into force in 1993<sup>2</sup>. This treaty affected the pillars, which were in the form of "Single European Act, Common foreign and Security Policy and Justice and Home Affairs."<sup>3</sup>. These pillars thus laid the foundation of the political, social and economic well-being of the organisation. Now, this treaty is so significant because it ensured that the structural organisation that is formed from the pillars would be independent in nature but would still be capable of connecting if needed. This connection would be automatic because of the changes that would impact all the pillars simultaneously. For instance, the changes or formation of a single market would impact the visa application in the entire region.

This treaty also established that the EU would be the governing body behind the regulations while the member states can only enforce laws in their respective states. This was an important difference between the treaty of Maastricht and other treaties. The parliament of

---

<sup>1</sup> Desmond Dinan, Neill Nugent and William E. Patersen, *The European Union in Crisis* (Macmillan International Higher Education, 2017) <[https://www.researchgate.net/profile/Wolfgang-Seibel/publication/318590970\\_The\\_European\\_Union\\_Ukraine\\_and\\_The\\_Unstable\\_East/links/5c78e669299bf1268d2dce38/The-European-Union-Ukraine-and-The-Unstable-East.pdf](https://www.researchgate.net/profile/Wolfgang-Seibel/publication/318590970_The_European_Union_Ukraine_and_The_Unstable_East/links/5c78e669299bf1268d2dce38/The-European-Union-Ukraine-and-The-Unstable-East.pdf)> accessed 9th August 2021

<sup>2</sup> Vallecillo Lucia Graziatti, 'THE TREATIES OF MAASTRICHT, AMSTERDAM, AND NICE' [2018] MEST Journal <[https://mest.meste.org/MEST\\_Najava/XI\\_Vallecillo.pdf](https://mest.meste.org/MEST_Najava/XI_Vallecillo.pdf)> accessed 9 August 2021

<sup>3</sup> Dragoş Adrian bantaş and Diana Elena Căpriţă, 'EMERGENCE AND EVOLUTION OF THE ECONOMIC AND MONETARY UNION: OVERLOOK AT THE DECISION-MAKING PROCESS AND THE LEGAL INSTRUMENTS USED (FROM THE MAASTRICHT TREATY TO THE PRESENT DAY)' [2018] <[http://cks.univnt.ro/download/cks\\_2021\\_articles%252F3\\_public\\_law%252FCKS\\_2021\\_PUBLIC\\_LAW\\_002.pdf](http://cks.univnt.ro/download/cks_2021_articles%252F3_public_law%252FCKS_2021_PUBLIC_LAW_002.pdf)> accessed 9 August 2021

the EU gained immense control over the member states. This meant that the legislative power was now vested with the parliament. Now, these pillars have established a strong political community in the EU. Before the formation of this treaty, the major focus was on economic integration, but this treaty led to the development of social policies as well. Another major point of this treaty was the mutual views regarding the international concerns which were set up within the treaty. This step reflected the interest of member states in establishing the states as a "Union."<sup>4</sup>

This treaty was the force behind the establishment of the European Union, and it is significantly important because it established the right of citizenship for every citizen of the state who was a member of the European Union<sup>5</sup>. The benefit of this citizenship was the right to vote in the countries of the European Union irrespective of what their nationality is.

Another significant achievement that was brought on by this treaty was the introduction of the "Euro" as a currency for the European Union. This led to the establishment of a system of unified banking throughout the EU. It also introduced such members who would be instrumental in following such policies that are important for security purposes. It also suggested cooperation for social and environmental well-being.

This treaty is considered to be so important because it was the force behind restructuring the power of Europe. It improved the political structure of EU states by the introduction of various reforms. Not only this, but it was a major force behind the economic integration and revival of loss that the European States had to face in 1970. This was done through the introduction of the "Economic and Monetary Union."<sup>6</sup>. This was the most important step for the economic development of the European Union as it was planned to introduce a single market. This meant the removal of barriers and freedom of trade for its citizens.

The political integration of Germany into the EU after the cold war was also a task handled by the introduction of this treaty which helped in maintaining peace by removing political tensions. This plan was an important step introduced in the treaty because it would help instability and trade progress amongst the European Community.

---

<sup>4</sup> Troitiño, David Ramiro, Karoline Färber, and Anni Boiro. 'Mitterrand and the great European design—from the Cold War to the European Union.' [2017] 7(2) *Baltic Journal of European Studies* <[http://eprints.lse.ac.uk/87533/1/Boiro\\_Mitterrand%20and%20Great%20European%20Design\\_2018.pdf](http://eprints.lse.ac.uk/87533/1/Boiro_Mitterrand%20and%20Great%20European%20Design_2018.pdf)> accessed on 9th August 2021

<sup>5</sup> Willem Maas. 'Citizenship of the European Union.' In *Oxford Research Encyclopedia of Politics*. 2020 <<https://www.yorku.ca/maas/Maas2020e.pdf>> accessed on 9th August 2021

<sup>6</sup> Silvana Târlea, Stefanie Bailer, Hanno Degner and others, 'Explaining governmental preferences on economic and monetary union reform.' [2019] 24-44. *European Union Politics* 20 <<https://journals.sagepub.com/doi/pdf/10.1177/1465116518814336>> accessed on 9th August 2021

Social integration in the EU was also brought upon by this treaty, where it was clarified that the EU would focus on the social wellbeing of its workers. This treaty increased the participation of member states and the legislative body of the EU to promote the best interest of education, employment and other social issues. It can be said that the steps introduced by this treaty increased the innovation of the EU in the social arena as this treaty was able to change people's opinion regarding the European Community, which was now sought as a composite unit. Although there were numerous agreements formed before this treaty, this treaty gave a legal effect to those agreements in a stronger way.

Another effect of this treaty was that European Community was now to be regarded as a Union which would show their commitment and integrity to remain so. But, one of the major obstacles in the ratification of this treaty was the opinion that the public might have regarding the formation of this union.

One of the theories that explained the importance and need of the Maastricht treaty was neo-functionalism<sup>7</sup>. They were also of the opinion that this treaty was significantly important because of the value it added to the integration amongst the member states. It made European Community stronger and economically viable. They were of the view that the gradual growth of the economy in the Union will lead to better cooperation.

Although the formation of this treaty required a lot of compromises, such as when Kohl took back his ideas, presenting a stronger political union, another issue was foreseen when there was tension between France and Germany, who were two powerful units of this union but the efforts from both the nations proved that this treaty only strengthened the position of the European Community in the world. Today, it is an established union that governs various states so that peace can be maintained. The treaties and directives of this Union are important to maintaining social and economic relations between various states.

---

<sup>7</sup> Jude Okafor, and Ernest Aniche. 'Deconstructing neo-functionalism in the quest for a paradigm shift in African integration: Post-neo-functionalism and the prognostication of the proposed continental free trade area in Africa.' [2017] 22 IOSR Journal Of Humanities And Social Science (IOSR-JHSS) <[https://d1wqtxts1xzle7.cloudfront.net/51733938/Tooichi\\_ACFTA\\_-\\_IOSR-JHSS\\_-\\_J2202016072.pdf?1486742118=&response-content-disposition=inline%3B+filename%3DDeconstructing\\_Neo\\_Functionalism\\_In\\_The.pdf&Expires=1628504641&Signature=IW9dMRK2WZsVjihkid2IDG7xu7-frbin9fXtuhkg13vt8oCVsdtKn-t-CYD2vFFz9KsRf5nZsMDhNiUHgl4qAHAOB9hu29Rr2zar77SWdZgof8NGVq8tjvQLIGJUBEDBM0MwR2fp6q-v6ZXYk2x41ZCRkvY8yBaZK3P00ULBGEhSzITdO5crA8uFwL6KSsJNVh8PTri3EexYeCT6du1EkfqdgbfH5n9FVKb8thGfCFX6IvyInnOrvtCcEwLWdikiAA1z2rwIauEqI4RnZic-TwBbKWxVBe80QrDudWH-PV64payA5~yyF-8wICWHHDt2bPD9AKJ1yZiW43~9od-mw\\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA](https://d1wqtxts1xzle7.cloudfront.net/51733938/Tooichi_ACFTA_-_IOSR-JHSS_-_J2202016072.pdf?1486742118=&response-content-disposition=inline%3B+filename%3DDeconstructing_Neo_Functionalism_In_The.pdf&Expires=1628504641&Signature=IW9dMRK2WZsVjihkid2IDG7xu7-frbin9fXtuhkg13vt8oCVsdtKn-t-CYD2vFFz9KsRf5nZsMDhNiUHgl4qAHAOB9hu29Rr2zar77SWdZgof8NGVq8tjvQLIGJUBEDBM0MwR2fp6q-v6ZXYk2x41ZCRkvY8yBaZK3P00ULBGEhSzITdO5crA8uFwL6KSsJNVh8PTri3EexYeCT6du1EkfqdgbfH5n9FVKb8thGfCFX6IvyInnOrvtCcEwLWdikiAA1z2rwIauEqI4RnZic-TwBbKWxVBe80QrDudWH-PV64payA5~yyF-8wICWHHDt2bPD9AKJ1yZiW43~9od-mw_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA)> accessed on 9th August 2021

**Question 2- “The Court of Justice of the European Union’s development of fundamental rights protection was, for the most part, a way to avoid Member States questioning the supremacy and authority of EU law”.**

The European Court of Justice was established with the Treaty of Paris (1952), which formed the EU's counterpart, the Coal and Steel Community (ECSC). The official purpose is to ensure that the legislation was followed throughout the recognition and enforcement of this [ECSC] Peace agreement and the regulations established for its analysis. The Court of Justice of the European Union examines EU law to ensure that it is consistently applied across the European Union, and then it resolves legal issues among governments and State institutions. The role of the European Union's Court of Justice was also to ensure that European law is considered and enforced consistently in all EU countries; to ensure that countries, as well as European Union institutions, follow EU law. Parliament passed a resolution in 1979 urging the European Community to join the ECHR. This even envisioned the European Union joining the ECHR. The government declared the Proclamation of Basic Freedoms and Rights to be adopted in an agreement passed April 12, 1989. The CJEU makes decisions in cases that are addressed before that. One of the most prevalent types of cases is those involving interpretation of the law ("The European Court of Justice and the Policy Process", 2021)<sup>8</sup>. Although legal systems in EU countries are responsible for ensuring that EU law is correctly applied, authorities in various countries may view things differently. A national court could approach the Court for clarifications if it is unsure about the application or legitimacy of an EU law. This is impossible to ignore also that Courts of Justice's activities have had a significant harmonising influence and have resulted in achievements where the Union's legislative has stumbled at times. In particular, by asserting that such concepts included in the regulations constitute independent conceptions of EU law, even though they are subject to optional application conditions. The Court of Justice of the European Union (CJEU) is widely recognised as a key driver of Political integration. The Court's legal precedent has

---

<sup>8</sup>.The European Court of Justice and the Policy Process. oopen.org,2021) <<https://books.google.com/books?hl=en&lr=&id=vY5HDwAAQBAJ&oi=fnd&pg=PP1&dq=The+Court+of+Justice+of+the+European+Union%E2%80%99s+development+of+fundamental+rights+protection+was,+for+the+most+part,+a+way+to+avoid+Member+States+questioning+the+supremacy+and+authority+of+EU+law&ots=SFgtlHPzXu&sig=AnmqzXdp7M27r2X0VDkUj78xF6o>> accessed 9 August 2021

consistently pushed Economic integration above what the Eu Agreements' justices anticipated or even what the Eu Trade union government choice processes could achieve. Considering that perhaps the CJEU is increasingly treading on politically important subjects like citizen status, development and welfare, employment law, as well as corporate responsibility and that this is occurring at a time when the ensuring product as a whole is losing favour the Judiciary's continued significance appears farther from self-evident. Its constitution has repeatedly enhanced the global level's capabilities at the expense of member countries. The Prime purpose is to resolve legal issues brought to it by Nations following global law, as well as to provide independent advice on legal problems addressed to it by authorised United Nations institutions and specialised agencies. Because the Court of Appeal does have jurisdiction for disputes between organisations and actions taken by a State Party, even against European Commission and its Councils, its Court has the first authority over all the other disputes of this nature. The Court's involvement over EU foreign policy stems from two factors: its willingness to structure and describe the Eu foreign expertise as well as the consequent restrictions on Member Nations, and its assertion mostly on lawful order's independence and its position as caretaker to an entry and impact of international treaties into the EU system (Fichera & Pollicino, 2021) <sup>9</sup>

Further, it can be observed that the Court of Justice has always played an important role in protecting the fundamental rights of the citizens. This was done by the court by recognising that the treaties of the EU were mostly silent in covering the rights of the citizens that are fundamental in nature.

The Court of Justice has played an important role by giving precedents and reviewing such acts that were important for protecting fundamental rights. However, the court is protecting the citizens in a limited way as it only covers the issues where the acts of institutions are violative of fundamental rights that they should have protected.

To say that the court developed the fundamental right protection only to establish the supremacy of the EU will not be the right statement as its major objective was the protection of its citizens. When the court was protecting its citizens, it involved different stages; firstly, it involved the formation of the charter that would include provisions for the community. The

---

<sup>9</sup>.Fichera M, and Pollicino O, 'The Dialectics Between Constitutional Identity And Common Constitutional Traditions: Which Language For Cooperative Constitutionalism In Europe?' (Cambridge.org 2021). <https://www.cambridge.org/core/journals/german-law-journal/article/dialectics-between-constitutional-identity-and-common-constitutional-traditions-which-language-for-cooperative-constitutionalism-in-europe/E8D1FE181EB6A389ED739155A8F3BB80>>accessed 9 August 2021

second stage was the implementation of this “Bill of Rights”. This might be similar to the introduction of these rights in the US.

In *Gabrielle Defrenne’s case*<sup>10</sup>, the question of the court's authority to judge the competence of member states arose and the court was viewed to observe that the function of the EU also includes measuring the progress of the community with regards to social benefits. The court also observed that the function of the EU is not limited to the economic benefits, but it should aim to progress the benefits of the people of this community.

After this case, the case of *Rutili v. Minister for the Interior*.<sup>11</sup> Came into the light where Mr Rutili was denied his right of free movement on the grounds of public policy. In this case, the Court of Justice observed that the member states could not deny a person their right to movement only based on their economic interests. Further, the court interpreted the restriction in an appropriate manner which helped in the proper implementation of the right.

This case is an example where the Court of Justice determined the protection of fundamental rights concerning the progress of the community and not to establish an unwanted authority.

The instances of a member state questioning the authority of EU law has no connection with the acts of the Court of Justice as they are only determined to protect the rights of the EU citizens. Further, when the authority of EU law is observed, it is a well-known fact that its power is derived from the parliament that presents its citizens. These citizens are no one else, but the representatives of the EU member state only. Thus, when a point of view regarding the authority of EU law is developed, it should be clarified that the Union is an authority because it derived its power from the member states only.

## **Part II**

**Question 8- “The right of free movement of persons is not absolute”. Discuss in the light of the relevant provisions of the EU Treaties, the ‘Citizenship Directive’ (Directive 2004/38) and the case-law of the Court of Justice of the European Union.**

The treaty of 1957 established the community for the economic benefits of Europe and was amongst the first to cover the free movement and “freedom of establishment”. “Freedom to

---

<sup>10</sup> Case 43/75, *Defrenne v. Sabena*, [1976] ECR. 455

<sup>11</sup> Case 36/75 *Rutili v Minister of the Interior* [1976] ECR 1219

move” was introduced as an important concept in the *Maastricht treaty*.<sup>12</sup> Established in 1992. This became an important part of citizenship. However, after the formation of the Schengen agreement of Schengen, the next step was the introduction of “*Citizenship Directive 2004/38/EC*”, which specified that citizens of the European Union and the family members of such people would have the right to move freely in the jurisdiction of European Union.<sup>13</sup> However, even after this directive, certain issues cover the free movement of people. But, after the introduction of the *Lisbon Treaty*<sup>14</sup> the right to free movement was confirmed after its inclusion in “General provisions on the Area of Freedom, Security and Justice”.

The legal basis of this right is found under Article 3(2) of the European Union Treaty<sup>15</sup> and Article 21 along with Title IV and V of the Functioning Treaty of the EU<sup>16</sup> . Further, Article 45<sup>17</sup> of the Charter of the EU that relates to Fundamental Rights is an important provision in regards to this question.

### ***Directive 2004/38/EC***

This directive was formed to develop a consolidated version of different provisions that were entailed under legislations like two Schengen agreements, one of 1985 and another of 1990 and the precedents. The main aim of this directive was to surpass such formalities that make free movement in member states of the EU difficult for the reasons of administrative work. It also assisted information of better definitions for family members and their status. Further, this directive also includes certain limitations that can be placed upon the free movement and residence of the members.

---

<sup>12</sup> Steven A. Conrad and others, 'The Extracorporeal Life Support Organization Maastricht Treaty For Nomenclature In Extracorporeal Life Support' (Atsjournals.org, 2021) <<https://www.atsjournals.org/doi/pdf/10.1164/rccm.201710-2130CP> > accessed 9 August 2021.

<sup>13</sup> Şule ARSLAN, 'Directive 2004/38/EC On The Right Of Citizens Of The Union And Their Family Members To Move And Reside Freely Within The Territory Of The Member States (2021) <[https://www.researchgate.net/profile/Mine-Degirmencioglu-2/publication/342961108\\_Ogrenen\\_Orgut\\_Olma\\_Yolunda\\_Yerel\\_Yonetimler\\_Kavramsal\\_Bir\\_Cerceve/links/5f1344ff299b1e548c14d62/Oegrenen-Oerguet-Olma-Yolunda-Yerel-Yoenetimler-Kavramsal-Bir-Cerceve.pdf#page=1105](https://www.researchgate.net/profile/Mine-Degirmencioglu-2/publication/342961108_Ogrenen_Orgut_Olma_Yolunda_Yerel_Yonetimler_Kavramsal_Bir_Cerceve/links/5f1344ff299b1e548c14d62/Oegrenen-Oerguet-Olma-Yolunda-Yerel-Yoenetimler-Kavramsal-Bir-Cerceve.pdf#page=1105) > accessed 9 August 2021

<sup>14</sup> Anna Södersten and others, 'The Lisbon Treaty 10 Years On: Success Or Failure?' (Sieps.se, 2021) <[https://www.sieps.se/globalassets/publikationer/2019/sieps-antologi-2019\\_2op-eng-web.pdf](https://www.sieps.se/globalassets/publikationer/2019/sieps-antologi-2019_2op-eng-web.pdf) > accessed 9 August 2021.

<sup>15</sup> Consolidated Version of The Treaty Of European Union [2012] OJ C326/13

<sup>16</sup> *ibid*

<sup>17</sup> Charter of Fundamental Rights of the European Union [2000] C 364/01

Under this directive, family members were also included and also consists-

1. Spouse

Spouses include the wife or husband of a person. The term might also include the wife or husband of the same gender, as observed in the judgment of Coman<sup>18</sup>. Many of the member states of the EU do not recognise the concept of same-sex marriages, which created an issue for the family consisting of such marriages. However, this issue was resolved by the Court of Justice in 2018, where the court observed that the meaning of the term 'spouse' under this directive would not be gender-biased. This judgment resolved the question of free movement and residence for same-sex couples.

2. It also includes partners that can be registered following the provisions of the host state. It is possible if that state gives these registered partners as marriage partners.
3. It also includes children who are less than 21 years of age and dependents, including those of the partners of the individual.
4. Ascendants of the individual or those of partners that are directly related dependants.

This directive also establishes certain rights and duties, ensuring freedom. For instance, if a person is to stay for less than 3 months, then they are only required to have valid identity proof and registration for the period of stay. Further, the freedom is not absolute and can be understood by the provision of registration in the host member state in case of a stay longer than 3 months. It is required by the citizens and families of the citizens to register with the host state or apply for a residential permit. Further, the right of movement in case a citizen wants to permanently reside in a state requires them to apply for the same after the completion of 5 years of stay legally.<sup>19</sup>. Furthermore, this directive also places certain restrictions on the entry and residence of citizens if they do not comply with provisions of policy, security and health of the public. These can be judged through the conduct of a citizen or their family.

---

<sup>18</sup> C-673/16 Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne. [2018] ECLI:EU:C:2018:385

<sup>19</sup> Anita Heindlmaier and Michael Blauburger, 'Enter At Your Own Risk: Free Movement Of EU Citizens In Practice' (Tandfonline.com, 2021) <<https://www.tandfonline.com/doi/pdf/10.1080/01402382.2017.1294383>> accessed 9 August 2021.

In the case of *Sala v Freistaat Bayern*<sup>20</sup>, the concept of equal treatment came forward. This was to be discussed in regards to citizens that do not hold citizenship or residence permit in a host state but was given the child allowance by the court by recognising that she had been an integrated part of the society.

Further, in the case of *Grzelczyk*<sup>21</sup>, the question of the free movement arose in respect of a student who applied for the funds for his study by the provisions of Article 7(1)(c) of the directive of 2004. He was denied the funds on the basis that he was not Belgian. However, the court observed that he is entitled to receive the “minimex”. Further, the court observed that Article 21 of the Treaty concerning the functioning of the EU along with Article 18 protects Grzelczyk from the discrimination he had to face under the law of Belgian.

Further, in the case of *Collins*.<sup>22</sup>, it was confirmed by the court that Further, in the case of Collins, it was confirmed by the court that there is a difference between workers who are full time employed as they have benefits that can be obtained from this directive and Article 45. These benefits are in the areas of equality where they have the right to be treated in the same manner as that of other workers, advantages that are derived from social bonds, and other people who are looking for jobs. Even if these people are protected under Article 45. Their benefit is limited to employment access regulations.

There have been many shortcomings in the peaceful implementation of this directive, as found out by different case laws and reports. Also, the cases that have come up in the front of the Court of Justice have increased. All of this can be understood as possible obstacles in the implementation of the free movement of citizens. It is also suggested that the provision is still in need of reforms that can cure such issues. But, the freedom of movement specified in the EU cannot be said as an absolute right because this right is covered by different provisions that are needed to be followed by the citizens. If the citizens fulfil their obligations, only then they are entitled to move freely.

---

<sup>20</sup> Case C-85/96 Martinez Sala v Freistaat Bayern [1998] ECR I-2691

<sup>21</sup> Case C-184/99 Grzelczyk v Centre Public d'Aide Sociale d'Ottignies-Louvain-la-Neuve [2001] ECR I-6193

<sup>22</sup> Case C-138/02, Brian Francis Collins v Secretary of State for Work and Pensions [2004] ECR I-2703