

Practical Experience and Theories of Legal Implementation, Interpretation and Application of law

Programme for the course 28-29 November 2018

Wednesday 28 November 2018

- 10.30-11.15: 'Welcome and introduction to the overall issues of the first day'
& Presentation of the participating PhD-students and their projects
Lecturer: Ellen Margrethe Basse, Department of Law, Aarhus BSS, AU,
- 11.15-12.15: 'Implementation and application of law - in theory and practice'
Lecturer: Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 12.15-13.00 Lunch
- 13.00-14.00: 'Field Work in Law'
Lecturer: Anette Storgaard, Department of Law, Aarhus BSS, AU
- 14.00-14.15: Short break
- 14.15-15.15: 'Transnational law - creation, application and interpretation'
Lecturer: Katerina Mitkidis, Department of Law, Aarhus BSS, AU
- 15.15-15.30: Coffee
- 15.30-16.15 'Overview and reflections on what some of the PhD fellows have explained in their assignment-papers such as their challenges in respect to the issues related to implementation, interpretation and application – with ideas on how some of these challenges can be handled'
Lecturer: Ellen Margrethe Basse, Department of Law, Aarhus BSS, AU
- 16.15 -17.30: PhD fellows' workshop and plenum.
- 18.00- Dinner

Thursday 29 November 2018

- 8.30-9.00: Welcome back, summing up from the first day and presentation of the overall issues of day two with *Coffee*
by Ellen Margrethe Basse, Department of Law, Aarhus BSS, AU
- 9.00-10.00: ‘Internationalization of administrative law – different styles of interpretation’
Lecturer: Rikke Gottrup, Department of Law, SDU
- 10.00-10.30: Discussion of the issues of internalization of administrative law and of the current relevance of separation between public law and private law
- 10.30-11.30: ‘Judicial responses at the domestic level to the international interpretation of human rights treaties’.
Lecturer: Jens Vedsted-Hansen, Department of Law, Aarhus BSS, AU
- 11.30-12.00: Discussion of the issues related to research in interpretation of international obligations by international courts versus the interpretation by national courts
- 12.00-13.00: Lunch
- 13.00-14.00: ‘Implementation, Interpretation and Application of Law by the European Court of Justice’
Lecturer: Ellen Margrethe Basse, Department of Law, Aarhus BSS, AU
- 14.00-14.30: Discussion of the issues related to research in transnational law creation and interpretation
- 14.30 -15.30: Finding patterns in case law and facing interpretation issues
Lecturer: Natalie Videbæk Munkholm, Department of Law, Aarhus BSS, AU
- 15.30 -15.45: Coffee
- 15.45 -16.30: PhD fellows’ workshop on how to share experiences related to research focusing on diversity *versus* consistency in the implementations, interpretations and application of law. The PhD fellows will receive questions related to the readings focusing on judicial responses at the domestic level to international and regional obligations laid down in conventions and protocols.

PhD fellows’ presentations and plenum discussion.

Assignments for PhD fellows

It is a condition for the participation in the course that each PhD fellow prepares a paper¹ – deadline 15 November 2018 - in which is described and explained the following:

I) *Your own research project:* please give a short explanation of the legal area, legal problems, theories and methods already decided? Are there any aspects of implementation from international and EU law to national law in your project? Are there any aspects of external pluralism in your project? (Concerning external pluralism in the praxis of the European Court of Justice, see Miguel Poiates Maduro “*Interpreting European Law: Judicial Adjudication in a Context of Constitutional Pluralism*” pp. 18-20; this text is included in the readings for this course)

II) *In reviewing the methods of interpretation:* Which interpretation methods are preferred by the actors and authorities of relevance in your project (the courts at international EU and/or national level; the EU Commission; agencies preparing legislation (e.g. as part of implementation of international or EU law); tribunals, compliance committees; administrative authorities; or...). Is it a grammatical interpretation combined with other legal arguments? Or teleological interpretation combined with grammatical and historical interpretation, comparative law, context or other legal arguments? Consider among others the following approaches:

- (a) a grammatical interpretation using the literal meaning of the term/words used in the statutory rules (e.g. dictionary definitions, focusing on a strict grammatical construction etc.);
- (b) a historical interpretation using the legislative history to reveal the intent of the legislator – taking into account continuation in the content of law (incl. favoring continuation of judge-made law);
- (c) a systematic interpretation considering the context and the legislative intent of provisions – ensuring coherence and consistency;
- (d) a teleological interpretation where the purpose of the law is considered – involving e.g. the comparative law in the interpretation – e.g. as employed by the European Court of Justice;
- (e) a political interpretation where the current governmental policy is guiding the implementation and interpretation; and/or
- (f) a constitutional interpretation. For example respecting special principles such as: rule-of-law-principles; fundamental rights; principle of non-retroactivity; and principle of non-extraterritorial application; principles of direct effect and supremacy; implied competences; state liability; separation of powers (institutional balance) etc.

III) Are there any differences between the interpretations made by the actors/users of the law that your project is focusing on – e.g. depending on their role or the regulatory levels? Or depending on their nationalities in comparative research projects?

IV) Have you considered how you can design/describe your analytical and methodological approach to these questions in your PhD thesis?

Readings:

The following articles are available at the Internet at <http://www.ejls.eu/issue/2/>

Ernst-Ulrich Petersmann “*Do Judges Meet their Constitutional Obligations to Settle Disputes in Conformity with ‘Principles of Justice and International Law?’*” Vol. 1, European Journal of Law Studies

¹ A total of 6 standard pages max. - A standard page includes 2,400 characters, including spaces

Benedetto Conforti “*The Role of the Judge in International Law*”. Vol. 1, European Journal of Law Studies

Miguel Poirares Maduro “*Interpreting European Law: Judicial Adjudication in Context of Constitutional Pluralism*”, Vol. 1, European Journal of Law Studies

Allan Rosas “*The European Court of Justice in Context: Forms and Patterns of judicial Dialogue*”, Vol. 1, European Journal of Law Studies

Kaarlo Tuori: *Rättens nivåer och dimensioner*, Juridiska Fakulteten vid Helsingfors Universitet, 2008, Chap. 4 and 5 pp. 30-71 or **Kaarlo Tuori**: *Critical Legal Positivism*, Ashgate, 2002, chap. 6 and 7 pp. 147-216. The students will receive it by email (depending on what you prefer – Swedish or English)