

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

Program for the course 4. -5. December 2019

Wednesday 4 December 2019

- 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: Bettina Lemann Kristiansen, 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: 'Transnational law - creation, application and interpretation'
Lecturer: Katerina Mitkidis, Department of Law, Aarhus BSS, AU
- 14.00-15.00 'Judicial responses at the domestic level to the international interpretation and application of human rights treaties'.
Lecturer: Jens Vedsted-Hansen, Department of Law, Aarhus BSS, AU
- 15.00-15.15 Coffee
- 15.15-16.15: 'Interpreting EU Law: Means, Methods, and Practices'
Lecturer: Graham Butler, Department of Law, Aarhus BSS, AU
- 16.15 -17.30: PhD fellows' workshop on interpretation and plenum.
- 18.00- Dinner

Thursday 5 December 2019

- 9.00-9:30 Welcome back, summing up from the first day and presentation of the overall issues of day two with *Coffee & rolls*
by Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 9.30 -10.30: Ph.d. fellows' Workshop on Implementation and Application
- 10.30-11.30 Finding patterns in case law and facing interpretation issues
Lecturer: Natalie Videbæk Munkholm, Department of Law, Aarhus BSS, AU
- 11.30-12.00 'Field Work in Law'
Lecturer: Anette Storgaard, Department of Law, Aarhus BSS, AU
- 12.00-13.00: Lunch
- 13.00-14.00: 'Implementation and Application of law'
Lecturer: NN
- 14.00-15.00: '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: Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 15.00 -15.15: Coffee
- 15.15 -16.30: PhD fellows' workshop on research design and methodology

Assignments for PhD fellows

It is a condition for the participation in the course that each PhD fellow prepares a paper¹ – deadline 15 November 2019 - 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.

II) *In reviewing the methods of interpretation*: a) Which interpretation method(s) do you plan to use? b) Which interpretation method(s) 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) *Implementation*: Are there any aspects of implementation e.g. from international and EU law to national law in your project? Implementation from national law to practise?

IV) *Application*: Are there any differences between the interpretations and applications 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?

V) *Research design and methodology*: What are your considerations as to 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 <https://ejls.eui.eu/issues/judging-judges-winter-2007-volume-1-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

Benedetto Conforti “*The Role of the Judge in 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

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)

Koen Lenaerts and **José Antonio Gutiérrez-Fons**. ‘To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice’. *Columbia Journal of European Law*, Vol. 20, no. 2 (2014): pp. 3–61.