

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

Programme for the course 6th and 7th December 2020

Monday 6 December

- 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: 'Interpretation in legal dogmatic research'
Lecturer: Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 12.15-13.00: Lunch break
- 13.00-14.00: 'Interpreting EU Law: Means, Methods, and Practices'
Lecturer: Katarina Hyltén-Cavallius, Department of Law, Aarhus BSS, AU
- 14.00-15.00: 'The interplay between legal history and dogmatism - using legal history to interpret the law'
Lecturer: Frederik Waage, Department of Law, SDU
- 15.00-15.15: Coffee break
- 15.15-16.15: 'Finding patterns in case law and facing interpretation issues'
Lecturer: Natalie Videbæk Munkholm, Department of Law, Aarhus BSS, AU
- 16.15 -17.30: PhD fellows' workshop on interpretation and plenum.

Tuesday 7 December

- 9.15-9.30: 'Welcome back, summing up from the first day and presentation of the overall issues of day two'
by Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 9.30 -10.30: 'Implementation and application of law - in theory and practice'
Lecturer: Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 10.30-11.30: 'Judicial responses at the domestic level to the international interpretation of treaties'
Lecturer: Ole Terkelsen, Department of Law, Aarhus BSS, AU
- 11.30-12.30: PhD fellows' Workshop on Implementation and Application
- 12.30-13.30: Lunch break
- 13.30-14.30: 'Law enforcement in a normpluralistic context'
Lecturer: Louise Munkholm, SDU
- 14.30-15.30: 'Field Work in Law'
Lecturer: Anette Storgaard, Department of Law, Aarhus BSS, AU
- 15.30 -15.45: Coffee break
- 15.45 – 17:00 'PhD fellows' workshop on research design and methodology'
Lecturer: Bettina Lemann Kristiansen, Department of Law, Aarhus BSS, AU
- 17:00- 17:30 Wrap up

Assignments for PhD fellows

It is a condition for the participation in the course that each PhD fellow prepares a paper – in English. The paper should be no more than 5 pages (a standard page includes 2,400 characters, including spaces). Please send your paper to Mette Hyldahl, mhyl@law.au.dk. *Deadline for the paper is 29 November 2021.*

The paper should include 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 practice?

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:

Yuji Iwasawa, [Domestic Application of International Law](#), in *Collected Courses of the Hague Academy of International Law*, vol. 378, 2016, pp. 9-262 (pp. 213-242 regarding 'Direct Enforceability of Judgments of International Courts').

Oliver Wendell Holmes, "Theory of Legal Interpretation," *Harvard Law Review* 12, no. 6 (1898-1899): 417-420.

Ole Terkelsen, [The Ajos Case and the Danish Approach to International Law](#), *European Public Law* 24, no. 2, 2018, pp. 183-194.

Richard H. Fallon Jr., "The Meaning of Legal "Meaning" and Its Implications for Theories of Legal Interpretation", *The University of Chicago Law Review*, Summer 2015, Vol. 82, No. 3 (Summer 2015), pp. 1235-1308

Terry Hutchinson; Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (October 2012): 83-120

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.

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.

William Twining (2010) "Normative and Legal Pluralism: A Global Perspective" *Duke Journal of Comparative & International Law* 20: 473-518.

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*

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